

OFFICIAL PROCEEDINGS  
OF THE  
CONSTITUTIONAL  
CONVENTION  
OF THE  
STATE OF ALABAMA

May 21st, 1901, To September 3rd, 1901.

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**THIRTY-FOURTH DAY**

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**MONTGOMERY, ALA.,**  
**Monday, July 1st, 1901.**

The Convention met pursuant to adjournment, was called to order by the President and opened with prayer by the Rev. Mr. Patterson, as follows:

Almighty and most merciful God, Thou who art the ruler of the Heavens and of the earth, unto Thee shall all flesh come. From Thee we derive our being. Upon Thee we all depend. Upon Thy gracious providence we are dependent for the life that is within us and for all the means that sustain it; for the wisdom that is given to direct us in our councils, and for the skill which is ours to execute the plans which we form. Now as we come into Thy presence we acknowledge Thy right to rule and reign over us, and we pray Thee that Thou wilt for Thine own Name's sake, preside over the councils of these, Thy servants, today. Give unto them that wisdom which cometh from above, that all of the things upon which they deliberate may be considered by them with care and with conscientious attention unto all the details and for the interests which are committed to their care. Guide, sustain and bless them. Keep them in physical health and strength, together with clearness of mind, soundness of judgment, warmth and tenderness of heart, that the grave interests which are in their hands may be properly conserved and that the issue may be for the glory of Thy name, and for the interest of our great and our beloved State. Hear and answer us, pardon our sins, and at last receive us to Thyself for the Redeemer's sake. Amen.

Upon the call of the roll, eighty-two delegates responded to their names.

Leaves of absence were granted to Mr. Kirkland for today; to Mr. Searcy, Mr. M. M. Smith (Autauga), Mr. Proctor, Mr. de-Graffenreid and Mr. Beavers for today; Mr. Reynolds (Henry) for Saturday and today; Mr. Samford (Pike) for today and tomorrow; indefinite leave for Mr. Altman (Sumter) on account of sickness.

The report of the Committee on the Journal was read, stating that the journal for the thirty-third day had been examined and found to be correct, and the report was adopted.

Upon the call of the roll of delegates for the introduction of resolutions, ordinances, etc.:

Resolution No. 213, by Mr. Fletcher:

Whereas, this Convention was called chiefly to make a Constitution regulating suffrage and taxation; and

Whereas, more than one half of the time allotted for its work by the enabling act has been consumed in the passage of one article, and

Whereas, expedition is plainly essential to the carrying out of the purposes for which this convention assembled, and to economize expenses to the State and

Whereas, it is believed that the consideration and disposition of the suffrage article as soon as possible will greatly facilitate and hasten to completion the business before the Convention.

Therefore be it resolved, That after the adoption of the Article now being discussed, the Article on suffrage shall be taken up for consideration, and continued until finally disposed of.

Be it further resolved, That all Articles heretofore made special orders shall be postponed, and taken up in their regular order, after the article on suffrage shall have been adopted.

The resolution was referred to the Committee on Rules.

Resolution No. 214 by Mr. Henderson:

Resolved, That whereas, under Chapter 5 of Article I of the statutes of this State it is provided that the expenses incurred in maintaining the office of the Department of Agriculture shall be paid out of the funds to the credit of the Department of Agriculture shall be paid out of the funds to the credit of this Department, derived from the sale of fertilizer tags, and further provides among other duties that the Commissioner shall furnish information and illustrative maps, as to mines, minerals, forests, soils, climate, water, water power, industries, and aid in immigration, all of which is in the interest of the entire State, and

Whereas, this Convention, in adopting the report of the Committee on Executive Department has made the Department of Agriculture and Industries a Constitutional office;

Now therefore be it resolved by the people of Alabama in Convention assembled, That no separate Department of this State should be maintained out of any special tax levied and collected under the laws of this State.

Resolved further, That it being evidence that the tax on fertilizers is largely in excess of the amount necessary for the protection of the farmers against spurious guanos, we therefore recommend that it shall be the duty of the General Assembly to enact such law as will require all taxes and licenses collected for the sale of fertilizer tags to be paid into the general fund of this State, as well as to make such just and proper reduction in said tax as will not exceed the cost of the purpose for which it was authorized to be levied and collected.

Referred to the Committee on Taxation.

Upon the call of the standing committees, the Committee on Schedule, Printing, etc., submitted the following resolution with a favorable report:

Resolution No. 165 by Mr. Oates:

Resolved, That inasmuch as the printed acts of the last session of the General Assembly are so voluminous as to make the unwieldy and easily destructible, that the Secretary of State be directed to have them bound as follows: The general laws in one volume; the general and local laws in two volumes; the additional cost, if any, to be paid out of the public printing appropriation.

MR. HEFLIN (Randolph)—I move a suspension of the rules and that the resolution be put upon its immediate passage.

THE PRESIDENT—It seems to the Chair that a suspension of the rules would not be necessary. The rules of the Convention requiring three readings only relates to ordinances, and when a resolution comes before the Convention, reported by a committee, it is in order for the Convention to take action thereon.

MR. HEFLIN (Randolph)—I move the adoption of the resolution.

MR. SPRAGINS—I move to lay it on the table.

The resolution was again read.

MR. PILLANS—It is possible there is a clerical error there. I think as read both times it says general laws in one volume, and general and local laws in two volumes. If that is the way it reads it should be amended to make it read correctly.

MR. OATES—I ask the gentleman who made the motion to table to withhold a moment. I want to show the delegates just what this resolution is aimed at.

MR. BURNS—A point of information. Has this Convention anything to do with what the last Legislature did?

THE PRESIDENT—The Chair will refer the inquiry to the Judiciary Committee. A resolution was introduced that they should pass on those questions.

MR. OATES—For the information of the delegates, that is the volume containing the general laws, (holding up the book)—

MR. GREER (Calhoun)—A point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. GREER (Calhoun)—This is not a debatable question.

MR. OATES—Who said it was debatable, my dear sir; I am just showing you what it is. I am not speaking to it at all, and do not propose to. I know it is out of order. Now this is the other volume, which contains the local laws—

MR. GREER—I insist upon the point.

MR. OATES—And these general laws are embraced in that, and as I understand the resolution, it is to print these two volumes and that in one.

THE PRESIDENT—It seems to the Chair the point of order is well taken. The question is on the motion to table the resolution as reported by the committee.

Upon a vote being taken a division was called for, and by a vote of 51 ayes and 21 noes, the motion to table prevailed.

THE PRESIDENT—The regular order will be the consideration of the report of the Committee on Taxation.

MR. O'NEAL (Lauderdale)—I desire to offer an amendment, if it is in order.

THE PRESIDENT—The Convention, at its adjournment, had under its consideration section four, and there was pending an amendment offered by Mr. deGraffenreid, the gentleman from Hale.

MR. O'NEAL (Lauderdale)—I desire to offer an amendment to the amendment.

THE PRESIDENT—The gentleman from Montgomery (Mr. Watts) has the floor.

MR. O'NEAL (Lauderdale)—Will the gentleman from Montgomery yield to me for the purpose of submitting this amendment?

MR. WATTS—Provided I have the floor as soon as the amendment is offered.

MR. BROWNE—I make the point of order that the gentleman cannot yield for that purpose and still have the floor.

THE PRESIDENT—After the gentleman yields the Chair will rule on the situation when it arises.

MR. WATTS—I yield provided I am to have the floor as soon as the amendment is offered.

THE PRESIDENT—The Chair cannot make any guarantees about what it will rule until the situation arises.

MR. WATTS—Mr. President, I am aware that this proposition to reduce the limit of State taxation, from 75 to 65 cents is no doubt a popular move, and would be received by the people with pleasure and gratitude; but, Mr. President, whenever a question of public import has come up for consideration I have never stopped to think whether the one side or the other was popular, but I have tried to content myself with determining which side of the question was right, and having determined that, to follow that side, whether it be with the majority or the minority. You might just as well give to a child who cries for it a dangerous toy because he wants it, as to give to the people of Alabama a reduced rate of taxation, when it would be dangerous to the fair name of this good State.

There has been in the Constitution since 1875, a limitation of 75 cents on the \$100 as to State taxation. There has assembled in this Capitol building a dozen Legislatures since that time, and but one, I believe, has ever thought the needs of the State demanded the tax rate to be at the limit. Some of these General Assemblies have put the tax rate at four mills upon the dollar. They have found their mistake. They have involved the State in difficulties which have compelled the Executive officers to violate the Constitution in going into the markets and borrowing money to meet the necessities of the State. If we have trusted the Legislature, in the past, why cannot we trust it in the future? The members of the Legislature come here, as we do, from the people. Are we to say that those gentlemen are not interested in the same manner that we are for the good of the people of this State, and for its good name? Are we to credit them with less patriotism than we possess? Why, then, Mr. President, should we refuse to leave this tax rate at 75 cents? Why should we reduce it to 65 cents? Why should we not leave to the General Assembly the determining of the affairs of government?

Let us look back a little. Let us look also at the present. We find the governor writing to this Convention, or at least to a prominent member of it, that it is dangerous to reduce this tax

limit. We find the Treasurer, the man who takes charge of the funds, and who is presumed to know best as to the liabilities of the State, warning us against this move. We find the Auditor of the State likewise, raising a cry of warning and telling us to beware.

We find two ex-Governors upon this floor giving us their experience and telling us the move is dangerous. Not only that, Mr. President, but I have before me a statement showing the present income and present expenditures of this State, estimating the receipts and disbursements on the basis of a 70 cent tax rate. This is 70 cents mark you, and not 65 as proposed by this committee:

#### RECEIPTS.

Assessment on \$276,000,000, at 50 cents .....	\$1,380,000
Special soldiers tax, 10 cents .....	276,000
Special school tax, 10 cents .....	276,000
Licenses .....	210,000
Agricultural Department .....	86,000
Insurance Department .....	60,000
Convict Department .....	120,000
Solicitors fees .....	20,000
Railroad licenses .....	12,500
Telegraph, Express and sleeping Car Companies.....	12,000
Corporation charter fees .....	13,000
A. & M. College fund from U. S. ....	25,000
Miscellaneous sources .....	50,000
Making a total of.....	<u>\$2,540,500</u>

#### DISBURSEMENTS.

Executive Department .....	\$ 43,500
Judiciary Department .....	106,000
Military Department .....	24,000
Mining, Geological and Insurance Department.....	14,500
Railroad Commission .....	12,500
Health Department .....	13,000
Agricultural Department and schools.....	47,500
Pension to Confederate soldiers .....	276,000
Educational Department, general appropriation .....	550,000
Interest on trust funds .....	150,000
Special tax, schools .....	276,000
Interest on bonds .....	450,000
Feeding and removing prisoners .....	100,000
Penitentiary .....	114,000
Interest on A. & M. C. trust fund.....	46,000
University .....	24,000
Montevallo .....	15,000

Bryce Insane Hospital .....	152,000
Schools for the Deaf and Blind.....	60,000
One-half expense Legislature .....	26,000
Errors, insolvencies etc. ....	56,000
Miscellaneous .....	50,000
Total.....	\$2,606,000

Or a deficit of \$65,500.

I am indebted to my friend Mr. Ashcraft for these figures. He has taken the trouble to ascertain them. Not only does he make this estimate, and I submit it to this Convention, but it is backed up by the following certificate:

July 1st, 1901.

Hon. J. T. Ashcraft,

Dear Sir—We hereby certify that the above estimate appended hereto is approximately a correct statement of what the annual receipts and disbursements of the State Treasury would be upon a tax rate of 70 cents, conceding that the tax values will be ten millions more than last year. This estimate is based upon a careful consideration of the records of our offices and the present and past business conditions in this State. The expense of holding the Constitutional Convention is not included in this estimate.

Yours very truly,

T. L. Sowell, Auditor,

J. Craig Smith, Treasurer.

MR. O'NEAL (Lauderdale)—For what year is that?

MR. WATTS—This is July 1st, 1901.

MR. O'NEAL—Is that an estimate for this year?

MR. WATTS—It is an estimate on the basis of a 70 cent rate for this year.

MR. O'NEAL—For this year?

MR. WATTS—Yes, as I understand it. I will read the certificate again so the gentleman can hear plainly.

The certificate was again read.

MR. O'NEAL—I still don't understand whether that is an estimate of the receipts and disbursements for this year or next?

MR. WATTS—It is an estimate of what the receipts of the treasurer would be upon a 10 cent basis.

MR. O'NEAL—For this year?

MR. WATTS—Yes, for any time on a taxable valuation of \$276,000,000.

MR. ASHCRAFT—That is admitting the claim of the Committee that the taxable values will increase \$10,000,000 this year, and make a total of \$276,000,000.

MR. WATTS—Now, Mr. President, this statement shows there would be a deficit on this estimate of \$65,500, but whether that estimate of a deficit is correct or not, do we want to risk a deficit? Had not we better have a surplus in our treasury than a deficit. What man that goes on a journey takes within his pocket only enough money to pay what he thinks may be the expenses of that journey? Does not the prudent man take some surplus with him? Should not the State of Alabama be governed by the same business principle?

Mr. President, it is but a few years before the State of Alabama will be called upon to fund its debt. Five years from today is suggested by my learned friend from Montgomery (Mr. Oates.)

The State of Alabama will be like any other borrower who goes into the market to borrow money. If we go today we can say to the lenders we have the right to levy a tax limited only by 75 cents on the hundred dollars, and your debt is secure. Your debt is absolutely secure, therefore give us the lowest rate of interest which can be had for fifty year bond. If we go to these lenders saying that the limit is 65 cents, our credit is bound to be hurt. Why, because we go to them with the statement that we have reduced our possible income by more than 13 per cent. Is it a business proposition, Mr. President for a merchant who has been getting along with good credit and a fair name, to reduce his annual income thirteen and more per cent and then go to his creditors? Could he expect the same consideration in the money world? We are to consider those propositions, and we are not to do anything which will cripple the power of this State to obtain the lowest rate of interest when we go to fund these bonds.

If, Mr. President, we limit the rate of taxation to 65 cents, it means one of two things. It means either that we must default on our public debt, or we must cut down our appropriation to our public schools, or we must cut down the appropriation to the Confederate soldiers.

What member of this Convention stands ready to take the position to do either? What man who has within his heart the love of Alabama is willing to put her credit at risk? What man is willing to run the risk of taking from her the proud position which she now has in the sisterhood of States? What man among us is willing to strike down the school facilities of the children of this State? Who is it that is willing to say that the child shall be deprived of its school privileges? Ought we not rather to



provide that there shall be a school house on every hill for the accommodation of the children of this State? And who is it, Mr. President, that is willing to deny to those brave and patriotic men who stood up for this State, and followed her flag, the small pittance that is now granted to them?

Another thing, Mr. President, which will follow. If we reduce this taxation to 65 cents, we simply invite the General Assembly to seek out more things upon which they can levy a privilege tax. You will find the citizen with the tax levied upon him as an individual, instead of upon general subjects of taxation. You will find the General Assembly seeking to tax this thing, or that, or the other thing, instead of raising the revenues of the State through the legitimate channels which have existed for years. Another thing; these gentlemen who are speaking on this subject, in favor of the reduction of this tax rate, seem to think that days of darkness and of depression may not come to this State again. Have we not had those days of depression in the past? Does not the recent history of this State show that the taxable values went down to about \$241,000,000? Can we guarantee that we will not arrive at that point again? If we do, then what is our condition? Where will we get the help? Can we send our Governor again to New York city, to beg the money lenders there, to violate the law and the Constitution of the State of Alabama, and lend us money, when we have no authority to borrow it, and no sure revenues with which to pay it back? Let us not put ourselves in that position. Let us content ourselves with the same course which we have pursued up to this time. Let us not take any chances with the affairs of State, any more than we would with our own business affairs.

It is said by the advocates of this measure that there will be a surplus of \$600,000 on the first of October next. Let me ask of those gentlemen how many hundred thousand dollars will the State then be liable for.

I am reliably informed that although there may be a surplus of \$600,000 in the Treasury on the first of October next, that at that time or shortly afterwards the State of Alabama will be called upon to pay more than \$1,000,000. If that is true why should we risk this reduction? Mr. President, this matter is of such importance that I have felt the necessity of saying something on the subject. It is a thing that we should stop and consider, we should not rashly do these things, we should consider the welfare of the State and we should remember the times that are gone. I see a ship, Mr. President, a noble vessel. She is loaded down with human freight. She has crossed the ocean and is now approaching her port. Every heart is beating with gladness and with excitement with the hope of being soon upon the land. There are two channels which lead to the harbor. To the untaught eye, the en-

trance to each of these channels seems to be perfectly safe, but the experienced pilot knows that the channel to the left has hidden beneath its water rocks and shoals. He believes that with care he can guide the good old ship through that channel into port, but he knows that along his path danger is lurking, and that the striking of any shoal or rock means ruin and disaster to his ship. He knows that down the other channel it is absolutely safe. There are no rocks nor shoals there. The vessel can float in security through that passage. What would the prudent pilot do? Will he guide the ship down the left hand passage and seek danger, or will he insure safety by taking the one to the right? The good old ship of State, Mr. President, has passed over many seas. She rode with safety until a few years after the war between the States. Then she experienced the patriotic, the good citizens of Alabama who had had charge of it up to that time were displaced by the United States government, and a hireling band placed in charge of her. These new sailors were inexperienced. They were unpatriotic. They were strangers. They sailed the ship into harbors into which they should not have gone. They hoisted a piratical flag. They ran the ship and sailed the seas for the money that was in it for them. The good people of the State watched it until 1874. It was not until then that they could again seize the helm of the ship. They siezed it in 1874, and since that time they have managed the ship and run it with safety and security. She has now arrived, Mr. President, within sight of the harbor. There are two channels which lead to the harbor of financial prosperity. This Committee on Taxation say: Take the one to the left, it is safe, it is free from shoals, you can pass along it possibly without danger and without disaster. These men, Mr. President, are honest and true, they would not for any consideration lead us astray, but they have not made finance a study; none of them have been in charge of the finances of the State. On the other hand we find two ex-Governors of the State, the present Governor and the Auditor and Treasurer warning us from that course. They cry out to us take the old passage, the old channel into the harbor. It has been trusted for years and years. Do not attempt this strange passage until you know fully its dangers and its troubles. I beg you gentlemen of the Convention, don't let us do this thing. Don't let us vote for this 65 cents, and thereby put the State in danger, but let us vote to let this tax stay as it is and trust to the Legislature, as they assemble from time to time, to do that which is just and proper for this State. You must remember that there was no limitation in the Constitution until 1875. That limitation was put at 75 cents on the \$100, and but once since that time has the Legislature reached the limit. Gentlemen this is too important a question to pass over lightly. Let us not vote because the measure may be popular, but let us vote according to our convictions as to what is right, what is for the best interests of this State

and when we have done that, each of us, whether we be right or wrong, can at least have the approval of his conscience.

MR. MAXWELL—When I consented to become a member of this Convention I purposed in my heart that I would be only a silent member, that I would only attempt to speak when the roll was called, or the vote was being taken, and it may be, sir, that before I shall have delivered the remarks I now wish to submit, or soon thereafter, that I will be wishing that I had stuck to this purpose. But be that as it may, I have the honor of being a member of the Committee whose report is now under consideration, and I want to offer one or two reasons why I think the fourth section of that article should be adopted without amendment and as presented by the Committee. Now, Mr. President, this splendid array of legal talent here, and parliamentary talent, I am afraid of, and I hope they will not side-track me with their points of order to this or that effect, but that they will let me proceed without interruption. I shall not repeat the splendid array of figures gleaned from the Auditor's report by the Committee on Taxation, and so convincingly submitted by our distinguished chairman. These figures have been submitted to you. Distinguished members of the Committee like Judge Coleman and others as well as the Chairman himself have told you with what great pains this data was gotten up, and that it is entirely reliable. The figures are before the Convention, they speak for themselves, and unlike some other speakers they do not mislead, but they point unerringly to the truth of the practicability of the Committee's recommendation that the tax rate can be reduced from 7 1-2 to 6 1-2 mills, and that it can be done without jeopardizing any of the interests of the great State of Alabama, and they further show, Mr. President, that we ought to do this and thus fulfill the Democratic platform and pledge to the people of Alabama in Convention assembled that they would reduce the tax rate if found at all practicable to do so. Now it is urged Mr. President, by gentlemen on the other side of this question that we are dealing in estimates. That is true. We are dealing in estimates, and what government in the world, national, State, county or municipal ever attempts to discover what its probable receipts or disbursements will be in any other way—it is the only way to do it. If we have our treasury full of money we need to make no estimate, we pay cash as we go, but unfortunately our treasury is not in that plethoric condition and we need to make estimates. The whole world makes estimates. Why the science of estimates and probabilities is as much a science as anything else. Just look at the mortuary tables of the great life insurance companies, and see to what a science they have estimated the computation of the probable duration of human life, and these tables have proven so accurate and stood the test of human experience and observation so long, that they have multiplied millions of dollars invested in human life. These

estimates are not more accurate than estimates upon which this committee have placed their recommendation to this convention to reduce the rate of taxation from 7 1-2 mills to 6 1-2 mills. These figures, as I stated, have been before the Convention for days, and yet they have not been denied, although the fact stands out that some of the most distinguished members of this Convention, men most thoroughly acquainted with the financial affairs of the State refuse to vote for a lower rate of taxation, and yet they do not deny the figures, and they base their objection to the reduction upon the ground that some disaster may come along, that some contingency in the future may arise, by which it may not be possible to enable 6 1-2 mills to produce enough revenue to defray the expenses and the wants of the State, and at the same time the figures of this Committee stand out in unmistakable terms telling us that we can do this, and that we can do it without jeopardy to the interest of the State. It is urged, Mr. President, that our Committee is too sanguine, that it took too rosy a view of the future, that we are proceeding upon the idea that the present wave of prosperity will last forever, that no more clouds of adversity will ever darken our horizon, and that the present taxable value of \$266,000,000 will never decrease, but will continue to increase from day to day, and year by year, and that our income will increase in the same proportion, and that this, with the saving we shall make in interest when the bonded indebtedness shall have been refunded at a much lower rate, than we now pay, will produce sufficient revenue to answer all the demands of our people. Now, Mr. President, I do not have much objection to that objection; it states the views of the committee pretty clearly, but I would only add this, that whether we have an increase in revenue, whether we have an increase in taxable values or not, if we do not have an increase in taxable values, and do not have an increase in disbursements, then with the revenue from other sources we will have revenue enough and to spare to meet the demands of our State. But suppose disaster should come, and suppose taxable values should recede a little, cannot we as easily and effectively meet any disaster by an increase in the taxable values, an increase in the assessable values of our property, as well as by raising the rate of taxation? Would not one plan be just as effective as the other? Wouldn't it amount to the same thing? Wouldn't it bring the same results? That is the way I see it, Mr. President. Now it is true that if our people were conscious of the fact that they had to return their property for assessment at its full value, the assessable value, they would feel we were practicing an injustice upon them, but Mr. President, my observation is that very few people return their property for taxation at anything like the value they set upon it when they put it upon the market for sale. We are not so poor as we think we are, and we are never so poor as when we are being interviewed

by the Tax Assessor. Mr. President, I would state here today that it is my conviction that if a J. Piedpont Morgan syndicate with a capital of \$500,000,000 should be formed for the purpose of buying out the State of Alabama the company would have to increase its capital stock before it would have money enough to pay for and get a title to the \$266,000,000 of assessable values returned by the people of Alabama, the present year, and then, Mr. President, there is another ever present and always practical remedy at hand for hard times or short receipts: It is always practicable to use it, though there are some people who do not like to have this remedy prescribed, and they do not like to practice, it and its name is retrenchment of expenses; but, Mr. President, it is a great safety valve that will nearly always regulate and restore the equilibrium to financial affairs, and it is a good thing to practice, whether we are financially sick or not; it broadens our sympathies, it prepares us to meet and grapple with adverse circumstances if they should come, and it helps us in the practice of self-denial. Now, Mr. President, with these remedies so potent and so powerful always at hand, I do not see that there is any use hesitating any longer about voting, for members of this Convention to cast their vote to reduce from 7 1-2 to 6 1-2 mills. We want the people of Alabama to understand that we are their friends, and that we want to frame a government that will not be a burden to them. It may be, that some members upon this floor do think that the committee is inclined to take too rosy a view of the future, but, sir, how can we be otherwise when we remember that Alabama, great and rich as she is in her fields, in her forests, in her soil, in her climate, in her manufactures, in her mines, in her commerce, and richest and greatest in her splendid and patriotic citizenship, has been put to the test and gone through ordeals heretofore and has been equal to any emergency that has ever been brought upon her, how can we help when we consider all this, being otherwise than hopeful? Why, sir, in the perils of war from 1861 to 1865, in the difficulties of property and carpet-baggers from 1866 to 1874, when she raised in her might, in the majesty of her strength and wrath and took back from worthless hands the government of her fathers again, since then she has been growing in prosperity and in the development of her great natural resources until in the last twenty-five years her taxable values have increased double, and yet we are told that she is yet in her infancy. We enter upon the threshold of this Twentieth century full of hope and full of pride and expectation of great possibilities. Her past is secure, though checkered, it is glorious, and we are proud of it. We are proud of her achievements, and, sir, we are here this day as delegates representing the sovereign people of the great State of Alabama in Convention assembled; we have abundant reason to thank God for the past, and to take courage for the future. I am proud of Alabama, and I would be the last man upon this floor that would put an obstruction in her onward

and upward march to progress. Let us, then, Mr. President and Gentlemen of this Convention, remove the obstacle of high taxation from our Constitution; let us reduce it to the lowest limit, 6 1-2 mills, as recommended by the committee, and let us make our great State as inviting as she is to capital, still more inviting; let us fix our rate in keeping with the rate of our neighboring sister States, so that with our great resources above all others, we shall be more inviting a field for them to come to. Now, Mr. President, I want to say in conclusion, for the benefit of the distinguished gentlemen from Montgomery, who have so earnestly and eloquently plead for some Constitutional provisions to secure an enlargement of these grounds and this capitol building itself, that I am in hearty accord with the spirit that moves them, and that I differ with them only as to the source whence the money shall come. According to the figures submitted by our Committee on the 1st day of October, 1902, we will have a net balance in the treasury of about \$347,000. Out of this the next Legislature can, and no doubt will, make the necessary appropriation to meet this necessary expenditure. I believe that these improvements ought to be made within the next year or two, and I would remind the distinguished gentleman from Montgomery that pride in the State Capitol is not confined to Montgomery alone. The scenes that were enacted here in 1861 when a new nation was born, and that makes this historic ground the common heritage of every Alabamian, whether we come from the Northern, the Southern, the Eastern or the Western borders of the State, it makes our hearts swell with pride every time we look upon its dome, or enter these sacred portals, and Mr. President, I believe that Alabamians can be trusted to secure the bonds that are necessary to buy and enlarge these grounds, and to adorn and beautify them, and to rebuild and rehabilitate this old capitol building around whose sacred walls are so many hallowed memories, and make it what it ought to be, a fit abiding place for the seat of a great and growing government like the State of Alabama. Mr. President, I believe with all my heart that this can be done, and that it can be done without any Constitutional provision—that the people of Alabama will take it in hand through their next Legislature, and that they will see to it that it is accomplished.

MR. FOSTER (Tuscaloosa)—Mr. President, like my friend, the gentleman from Tallapoosa, I have been a silent delegate. I don't know that I should have attempted to make any talk upon this provision now up for consideration before the Convention, but for a somewhat accidental discovery of the necessary requirements to get the floor, and for the further reason that having been at first opposed to and afraid of the adoption of this report, I have expressed to some delegates my doubts as to the advisability of adopting this section. I am, Mr. President, in the attitude of a convert to the Committee's report. When it was first printed and

laid upon my desk, and I had studied it and read it over, I thought that this section could not safely be adopted, and that in as much as the tax rate now is up to the Constitutional limit of 75 cents, and it seemed to be necessary in order to meet all the expenses of State Government, that we could not safely reduce that limit, and so, Mr. President, for the purpose of making a fight upon this provision, I proceeded to investigate the facts and figures for myself. Much to my surprise when I had done so, I found that I was on the side with the Committee. I feel assured, Mr. President, that this rate can be safely reduced to 65 cents. If I thought it would take one dollar off of the school fund, or one dollar off of the Confederate pension fund, or would impair in the least the credit of this State, I should oppose it, but believing that the figures, the facts, show that it can be safely reduced, I feel that I would be recreant to the pledge that the Democratic Convention put upon the Democratic members of this Convention to reduce tax rate, if practicable, if I did not vote to support the section as reported by the Committee. Now gentlemen argue as if this is a new and unheard of thing, as if the idea of limiting the discretion of the Legislature in the levy of taxes is something new in the history of the laws of this State. Why Mr. President, if I felt that way, if I had the absolute confidence in the legislatures, that gentlemen who have argued this question upon this floor seem to have, I should say let us not limit their discretion by any figures at all, let the Legislature be the sole judge of the limit.

MR. ROGERS (Sumter)—I wish to ask Mr. Foster if his confidence in the Legislature is as great as these gentlemen indicate, what would be the use of having a Constitution at all?

MR. FOSTER—Very little at all, especially upon this tax limitation. I have no criticism to make upon the members of Legislatures, I have always found the members to be the best men in the world. The fact is it is not so much the fault of the General Assemblies that they have been extravagant in their appropriations, as it is the people of Alabama—we are living in an era of extravagant public expenditure—our National and State history of recent years shows it. We have the idea that when any enterprise is gotten up, especially if there is anything of a public character involved in it, we ought to come to the Legislature of Alabama, or to the Congress of the United States and ask for State aid. Well, now, when we come before the members of the General Assembly, if we cannot persuade them, I have seen it frequently, Mr. President, we add to our persuasive arguments the eloquence of beauty and bring in the ladies to besiege these gentlemen in the interest of some appropriation. Now I observe on page 21, the Roman numeral page, of the Auditor's report, that immediately after the ratification of the Constitution of 1875, the tax rate was fixed at 7 1-2 mills—the Constitutional limit. I infer from that that our forefathers who assembled in the Convention of 1875 did

as this Committee is endeavoring to do today, they carefully examined and calculated the necessary amount of taxes to be levied upon the taxable property of this State, and having ascertained that they placed it at the limit of 7 1-2 mills. So I say we are not attempting anything unheard of, or any new proposition here, when we figure out what will be necessary for the support of the State government, and the appropriations already made, and which we contemplate will continue in the future, and say that the tax limit shall reach that amount and no further, we are simply following in the footsteps of the framers of the Constitution of 1875. Now, Mr. President, for the figures that lead me to my conclusion. This Convention is told by the distinguished Chairman of this Committee who has made a careful investigation of it, whose estimates I think, are conservative and safe, that the taxable value of the properties of this State next year will be \$278,000,000. Well, then, a tax of 6 1-2 mills on \$278,000,000 in round figures is \$1,807,000. Now I think we may safely estimate that the taxes from all other sources will certainly not be less than they are estimated by the Auditor for this year, than the actual receipts up to this time according to the Auditor's figures show, and I place that, Mr. President, at \$922,000—those are the figures shown by the Auditor. So then we have as gross receipts on a basis of 6 1-2 mills \$2,729,000. Mr. President, we might safely appropriate \$1,200,000 to the schools (I believe that is in excess of the present appropriation) give the same pension fund of \$250,000, and have left for the general expenses of the State government \$1,200,000, making a total of \$2,650,000 for appropriations, and a surplus of nearly \$80,000. Now, Mr. President, I know that figures have been used for different purposes by delegates who have argued this question, and I have been somewhat amazed at the different conclusions that have been drawn from these elastic figures, but I take the figures from the Auditor's report submitted to the Governor of this State, for use in the General Assembly, and I find that upon page 16 the Auditor says he estimates the disbursements for the year 1901 at \$2,526,970, and in a foot note to that estimate he adds: "The above estimate of receipts and disbursements are made also for the year ending September 30th, 1902, except as to the item of \$50,000 for Legislative expenses." Mr. President, I say it is not only practicable for us to reduce this limit, but it is necessary that we should do it in order to carry out the pledges that we are under to the people of Alabama. Now they say this limit of 75 cents does not fall hard upon any body. It does not, Mr. President, upon the man who comes before the General Assembly for appropriations, but there is a large element in the state which has no representation before that body; there is a larger element, the poor people of this State, who do feel this burden of taxation, and it is for those people, for the relief of those people that this committee, and those of us who favor this report are speaking here today. It has been suggested that we may impair the credit of the State. The distinguished gen-



tleman from Montgomery (Mr. Watts) made a very strong argument upon that point, but I want to ask the gentleman if he does not know that character in the business world is as much a basis of credit as revenue? I want to ask him if the character of the General Assembly of Alabama is not the main basis of credit when we go before those bond holders and bond buyers, upon which they are willing to risk their money and to take the bonds of Alabama? Why, Mr. President, when the rate was down to 4 mills was there any doubt that the General Assembly of Alabama would appropriate enough money to pay the interest on this debt? They might argue in reply to that that there was a possibility of additional taxes, but, Mr. President, it all comes down at last to reliance upon the character and business honesty of the Legislature of Alabama. Now, sir, I have no fear, I don't think any delegate upon this floor has any fear, that the credit of Alabama will be hurt in the least by the reduction of the limit to 65 cents. It is also said that we may reach a period of depression. That may be true, and doubtless will come, Mr. President,—those periods come occasionally as we have known in the history of our State, but I suggest, Mr. President, that the values as now assessed in this State are not upon any inflated basis, they are not even up to the value of property within this State. There is no comparison between this period and 1891. That was a period known as boom days, such a boom, Mr. President, as never swept over this country before, unless it were the boom days of 1836-37. I believe I have the dates right, I don't know, some time in the thirties. Let us look at all these little towns, Mr. President—Ft. Payne, Piedmont, Tuscaloosa, where cotton fields were cut up into first avenue lots, and you saw the signs of streets out there without any street, and they sold at First Avenue lot figures. Well, when the crash came they simply converted back to their actual value, they became cotton fields again, and they were taken off the market as corner lots and put upon their actual basis upon the tax books of the State. There they are today upon that actual basis of valuation. So I say that there is not any inflation in the tax values of Alabama, and if the time does come, if there should come a time at the end of five years when the State debt is to be refunded, that a period of depression should again come upon this State, the tax values will, by that time have arisen, we may safely estimate, to over three hundred million dollars. I think, Mr. President, that gentlemen are unnecessarily alarmed about the credit of the State. The figures show that we may give to the schools and Confederate soldiers every dollar we now give them, pay the interest on the public debt and keep up every appropriation that the last General Assembly made, and yet have a surplus in the treasury even at a basis of 65 cents.

MR. O'NEAL (Lauderdale)—Mr. President, I would not trespass upon the time and patience of this Convention but for

**candid conviction** that this is the most important question which **has been submitted** for our consideration since our organization. It is with profound reluctance that I feel impelled from a sense of duty to oppose the report of the committee. I fully appreciate the ability and patriotism of the committee and recognize that they have given this subject their most careful consideration and have reached their conclusion conscientiously after thorough study. When the report was first submitted I was inclined to accept it, but after listening to the debate and reviewing fully the arguments in its support I am convinced that the reduction is unwise and unsafe.

There are few delegates in this Convention except those whose optimism is impervious to argument, who will deny that after all that has been said in support of this reduction, after consideration of every estimate and every array of figures with which we have been furnished, there still remains the modest doubt. Like Banquo's ghost, the doubt will not down at our bidding, and hence I see no alternative but to resolve that doubt against the reduction and in favor of maintaining unimpaired the financial credit and honor of our State. It has been urged that we are pledged by the platform of the party to reduce the present limitation on the taxing power if possible. That is true, but we were not pledged to make a reduction which might affect the splendid credit which this State now sustains in the commercial center of the world.

We were equally pledged to take no backward step in the cause of education, or to impair the ability of the General Assembly to continue to dole out that small mite which we justly owe to that splendid body of men, whose ranks disease and age are rapidly thinning—the survivors of that band of heroes whose blood freely flowed at honor's call and now stands where it fell.

It is urged that this reduction will be popular and will bring votes to ratify the Constitution.

Mr. President, if an overwhelming majority of the people of Alabama, the people to whose gracious confidence we are indebted for seats in this Convention, and who have vested us with such grave responsibilities, should with one voice demand this reduction and we, as their representatives, knew they were mistaken, that obedience to their commands would prejudice our credit, impede the proper administration of our State government, or fetter our progress, we should vote against the reduction, and disregard the demands, or prove unworthy of their confidence, and false to our consciences and our oaths. I warn you who may be influenced by such appeals, that if you are as I believe mistaken, if the effect of these reductions of the State bonded debt, or impede the progress of education, or in any way impair the efficiency of our State government, or cause a halt in that career of progress on which

our State has entered, that instead of the approval you will receive the condemnation of the people of Alabama.

The distinguished Chairman of the Committee stated in his argument on the floor that no other extraordinary expense could be made for the next fiscal year. His estimate of a surplus of \$59,000 is based on the supposition that we will not have any extraordinary expenses except those he enumerated. Yet, Mr. President, in less than twelve hours after he concluded his argument, the report of the Committee on Suffrage and Elections was submitted to this Convention, and if the Article on that subject which they report is adopted we will be confronted with an extraordinary expense of at least \$100,000.

Under the suffrage plan poll taxes are voluntary—the payment cannot be coerced. We collected in the fiscal year ending September, 1900, \$150,000 poll taxes. We can conservatively estimate a reduction of \$50,000. And to this the expense of registration, about \$30,000 or \$40,00 more, and we have alone in this item \$80,000 extraordinary expense, which is not embraced in his calculation.

So the surplus with which the distinguished Chairman has dazzled our imagination—like snow flakes on the water—seen but once and gone forever. The distinguished Chairman in his zeal has gravely argued that a reduction of our tax limit is necessary to induce capital to invest in our borders—that industries will not locate in a State when you have a fixed tax on their property of 75 cents on the \$100, when they can go to States where the tax is less.

Only a few states in the Union have such limitations. Texas, North Dakota, Montana, Missouri and some few Southern and Western States have such limitations.

After the close of the civil war commenced an era of profligacy—extravagance and reckless expenditure of public money almost without parallel. A horde of adventurers from every haunt of vice and crime flocked to the South, banded the negroes together with a compact of all departments of government in the States of the South, prostrate from the effects of the greatest civil war of modern times. They devised the various forms of taxation by which a people could be oppressed; issued bonds for railroads and public improvements which were never constructed and divided the proceeds between themselves and dishonest contractors. They imposed on the impoverished States of the South a burden of debt which brought bankruptcy and ruin to our very thresholds and destroyed public credit. Taught by their sad experiences, the people of Alabama, when they regained control of the State government in 1874, limited in the Constitution the amount of taxation which may be levied for State and county purposes. It is a wise provision and should not be disturbed. Such provisions, however, are not found in the great and progressive States of the

Union, and their marvellous growth in wealth and prosperity in the face of the absence of such limitation on the taxing power, is a complete refutation of the argument so earnestly made by the distinguished chairman of the committee—that no State can prosper or expect the investment of capital in its borders that does not contain similar limitation.

Another result of this limitation on the taxing power we have learned from experience, is that when, by reason of this prohibition on rate of taxation, the Legislature is confronted with a deficit, it is unable to provide necessary revenue.

To meet the expenses of government they must necessarily resort to license or privilege taxes to supply the deficiency. This is the lesson which a study of our financial history teaches. During the last administration to meet the increased demands of the State government, the Legislature swept the field of expedient and exhausted the catalogue of subjects on which they might impose the burden of a license or privilege tax. The result is that the State and county and municipalities in order to supplement an insufficient revenue have imposed license or privilege taxes on every class of occupation, industries or business from the wealthy corporation to the newsboy and bootblack and the humblest tailor in the State, from baseball parks to hobby horses. No occupation or business has escaped.

MR. REESE—Are not those taxes for city licenses imposed by the City Councils at the request of the merchants to keep out the competition of the farmer?

MR. O'NEAL—I care not at whose request they are made. I say such taxes operate onerously upon the great agricultural classes of the State, and the trouble is that by the limit upon your rate of taxation, you force the counties and cities of your State to supplement their deficient revenues by these harsh, arbitrary and unjust privilege taxes.

MR. CUNNINGHAM—I fail to see the connection in the rate of tax limit upon taxation for State purposes with the revenues for county and city purposes.

MR. O'NEAL—I will state the connection. The State is doing the same thing. The connection is this: The State is imposing these license privilege taxes on every class of business and occupation. As I stated, the last Legislature swept the whole catalogue of subjects and exhausted every imaginable subject to increase the privilege taxes and the city and counties have followed the example of the State.

MR. BROOKS—Don't the gentleman know that for many years the cities have been levying this privilege tax, long before the Legislature?

MR. O'NEAL—They have, but not to the same extent.

MR. BROOKS—Then it is not under the influence of the Legislature that they have done it?

MR. O'NEAL—They have been imposing it only to a limited extent. Not to the same extent as in recent years.

MR. BROOKS—Haven't these privilege taxes always been paid in the cities without reference to the State?

MR. O'NEAL—The Legislature would have it in its power to forbid the levying of such taxes. The Legislature grants every charter in the State, and it would be in the power of the Legislature to forbid any corporation or city from imposing any such privilege tax.

This form of taxation is the most arbitrary, unequal, unjust and inquisitorial that can be devised. It is not imposed according to the capital invested, or the income derived from the calling, occupation, profession or business. It operates as a positive and vexatious fetter upon trade and commerce to close the doors and avenues of employment to many of the most deserving in the State. It has retarded our growth and prosperity, for where the avenues of trade and employment are even partially blocked by restrictive legislation, the highest development of industry and commerce cannot exist.

In most of the towns and cities of the State are found numerous and vexatious statutes imposing license taxes on the sale of farm products, with the result that the market for the farmers has been curtailed and the cost of living increased enormously. In my own town, which is but an illustration of what exists in almost all others, the farmer cannot sell his beef or mutton to the consumer at retail. The country merchant, who formerly gathered the farm products of his neighborhood—poultry, butter, eggs and other fruits and vegetables—is required to take out license before bartering or selling to the consumer in the city. The farmer, it is true, can sell without license a portion of the products on his own farm, but if he supplements his supply by purchase from his neighbors, he must pay a privilege tax.

So these license or privilege taxes operate most oppressively and grievously on that class of our population—the great agricultural classes—which deserve and should receive the fostering care and protection of government.

So, Mr. President, the conclusions unmistakably follow that when you reduce the limit of State taxation and force the Legislature to resort to other methods to supplement the revenue of the State, you do not decrease taxation, but merely substitute for a just ad valorem tax in force throughout the State, the harsh, arbitrary, unjust and unequal system of license or privilege taxes.

The adoption of this reduction means a perpetuation in this State of the harshest and most unequal and onerous system of license taxation ever imposed on a free people, with all the manifold evils.

So I say to the distinguished chairman of the Taxation Committee that the people of Alabama will not be misled by the morsel of tax reduction you offer them.

They are groaning beneath the burden of these license taxes, and you heed their appeals by offering them a remedy which only aggravates the evil—a remedy which you confess, if your estimates are erroneous, may jeopardize the splendid credit and high honor of this proud commonwealth.

Mr. President, the chairman of the Finance Committee and others, who have supported this report, base their estimate of a surplus of \$59,000 in 1902, upon the assumption that the State, in the future will be exempt from a recurrence of the same extraordinary expenses which have existed in the past? Mr. President I have not read aright the lesson which financial history teaches if it be not true that what has occurred in the past will occur in the future. The average of extraordinary expenses in any government can be calculated with the same exactness as the average of ordinary expenses. He is wise, indeed, who can foretell what the future will bring, but one thing we all do know and that is that the same unforeseen contingencies which have arisen in the past will most likely occur in the future. The distinguished gentleman from Tuscaloosa (Mr. Fitts) whose optimism is as innocent and guileless and as proof to argument as a Col. Sellers, tells us that during the Oates administration the State maintained the credit by borrowing money without legal authority and that our credit is so high that our ability under the law to pay will never be considered. He overlooks the fact that our credit was high because at that time we taxed only a rate of 5 1-2 mills and the capitalists of the country knew we could increase the rate to 3-4 of 1 per cent. I ask him if we had then been levying a tax up to the limit of the Constitution would even his surplus of optimism induce him to believe that the loan could have been so easily made.

MR. OATES—That is correct. The rate had been increased a half mill just about the time I was inaugurated, but the State's credit was so good that they borrowed a half million at 5 per cent.

MR. O'NEAL—Well, it was only five or five and a half mills, but if the money-lenders in New York had known that the State had no power to increase the taxes under the Constitution, if they had known that the constitutional limit had been reached, I would ask the gentleman from Tuscaloosa if even his surplus of optimism would lead him to believe that this money could be secured. That would be the situation we would be in if at any time a deficit should arise and we should seek a loan from the financial centers

of the world. They would say "You have reached your limit, you can proceed no further."

MR. FOSTER—Was the rate increased after the money was borrowed for that purpose?

MR. O'NEAL—Certainly.

MR. FOSTER—I understood the gentleman from Montgomery (Mr. Oates) to say that it had been increased before.

MR. O'NEAL—It was increased afterwards as I remember.

MR. FOSTER—I understood it the other way, that it was increased before and not afterwards.

MR. O'NEAL—Now I have some figures here submitted to me by one of the most distinguished citizens of the State, one whose familiarity with this subject cannot be question.

Total assessments for present year, \$267,000,000 will	
yield revenue, at rate of 7 1-2 mills, of.....	\$2,002,500
Bal. estimated receipts come from other sources .....	545,000
Total.....	<u>\$2,547,000</u>

In this is included every source of revenue, including \$150,000 poll tax, which belongs to counties—also special tax of 1 mill each for soldiers and schools.

Total estimated disbursements, \$2,526,970 or \$20,000 excess receipts over disbursements.

This \$20,000 will be wiped out by expense of this Convention and \$30,000 over.

After adoption of 6 1-2 limit:

Take estimated assessments at \$275,000,000.

Tax rate for all purposes, 6 1-2 mills will yield.....	\$1,787,500
Bal. estimated receipts must come from other sources.....	760,000
Total.....	<u>\$2,547,500</u>

To make receipts equal to year 1900-1901.

Where will \$760,000 other sources come from?

Take off the 1 mill each for pensions and soldiers and	
you have 2 mills or .....	\$ 550,000
Take off amount pledged as annual contribution to	
schools and you have .....	550,000
or 2 mills more.	

These two items absorb 4 mills of the State's levy and leaves 2 1-2 mills for every other purpose.

There is not a County in the State that can live on a 2 1-2 mill rate.

If this limit prevails and the special taxes for schools and pensions, and special appropriations for schools continue there will still remain \$1,400,000 of obligations to be met. Such as \$450,000 for interest, over \$100,000 for State officers, judges and solicitors, \$50,000 interest to university and A. and M. College, \$160,000 for Insane Hospital, \$60,000 for Deaf, Dumb and Blind and numberless other items. What will 2 1-2 mills realize on \$275,000,000 of taxable property: \$687,000, leaving \$713,000 to come from other sources.

MR. BROWNE—Will the gentleman mind telling us the name of the gentleman whose figures these are:

MR. O'NEAL—They are made by Col. Screws.

MR. BROWNE—Of the Advertiser?

MR. O'NEAL—Yes, at my request.

Now one gentleman says we can meet the deficiency by raising the value of property. What an argument to make to an intelligent body of men! Raise the valuation of the property, increase the assessment, does that give the people any relief?

MR. BROWNE—Who made that argument?

Mr. Foster or Mr. Maxwell one, I don't remember. What relief does that give the people? If you are paying taxes on a piece of property valued at \$500 and the back tax commissioner arbitrarily raises it to \$1,000, are you not paying \$1 on the \$100 even if the rate were fifty cents on the \$100? He says if we reduce the limit of taxation it will result in more economy and we can like a farmer with a short crop or an insufficient larder still live. Yes we can still live. We could close the public schools, we could leave the veterans of the South to bear as they have in the past, without murmur or complaint the pangs of poverty and want. We could set back the clock of progress in this State and halt in our march of development and industrial growth. If that is the feast to which we are invited I for one will have none of it. It may be popular to vote for tax limitation, but I for one will not let popularity weigh in the scales against my conscience and sense of duty to my State, my honest conviction and sworn obligations and responsibilities as a delegate on this floor.

Mr. President, we have the future of Alabama in our keeping. Let us not sacrifice our sense of duty to the demands of political expediency. Alabama has in the past few years grown marvelously in wealth and power. From the fiery furnace of reconstruction, from satrap rule, from military domination, from all the frightful



results of misgovernment, robbery and jobbery, she has emerged, her garments pure and spotless as the faithful of old and all she asks is that we give her an honest ballot, a reformed suffrage—that we put no obstacle across her pathway and like an awakened giant she will move forward to grander and more triumphant victories in the fields of progress and commerce.

MR. SPRAGINS—My friend and next door neighbor will run with the fan tails. We can do nothing with him. He is a lost soul.

My friend is nothing if not eloquent, and by the way, Mr. President, all the eloquence that has been poured forth on the floor of this Convention has come from the side which opposes the report of the committee and desires the tax rate to remain where it now is. It is a question that should be considered coolly, calmly and deliberately and not discussed with passionate feeling or with eloquence. They tell us scornfully that it is a popular measure, that it is easy to get at this proposition because they believe it would be popular with the people of Alabama. That argument is as unfair and unjust as it can possibly be. They should give us credit for being honest and truthful and trying, as we see it, to do what is right, just as we give them credit for believing honestly and fairly that the reduction of ten cents on the \$100 would destroy the public schools of the State, would take from the old soldier the pension that has been voted him by the Legislature and would take from the public schools the one mill tax. That is what they tell us and we have them credit for being honest in their assertions and they should give us credit for similar honesty, when we say that we have carefully investigated this matter and believe this reduction can be made without impairing the credit of the State, and that it should be made. We say it can be made without taking one jot or tittle of the appropriation to the public schools, and without in any way interfering with the pension to the old Confederates.

I have not the honor to be a member of the Committee on Taxation, but I have taken the pains and the trouble on the submission to me of figures made by Mr. Searcy of Tuscaloosa, a member of that Committee, who is a practical and successful business man of close powers of reasoning, to go over those figures carefully, spending two or three hours on it and I have come to the deliberate conclusion that we can make this reduction and ought to do it in order to be true to our pledges, not only to our open pledges but to our implied pledges to the people of Alabama to administer the government economically and to their best interests. I have no such specific knowledge and information as to the figures that I can go into detail upon this proposition. All that I can say is that when this report was submitted, I, with others, was startled, greatly startled, by the proposition of the

Committee to reduce the tax limit in the State of Alabama. My first impression was decidedly against it, and, for the purpose of informing myself and of casting upon the floor of this Convention an intelligent vote, I made the investigation just alluded to.

My distinguished friend who has preceded me says that the argument of the Chairman of the Committee on Taxation is inapplicable, that a bad impression would be produced, that it would be hurtful to the State of Alabama in the matter of immigration. The Chairman of that Committee is exactly right upon that proposition. The County of Madison from which I hail, as largely as any other county in Alabama, is receiving immigrants from the Middle West and Northwest, a class that is very desirable. They come with money in their pockets and pay spot cash for our plantations. I have in mind a former distinguished citizen of the State of Missouri, who, in the last few years, has come to Madison County and paid \$13,000 spot cash for a plantation. The first question after I became acquainted with him was what is your constitutional rate of taxation in the State of Alabama. When I told him it was three-quarters of 1 per cent., he was dumbfounded and was startled so much so that if he had known those facts prior to his coming to Alabama it might have deterred him from making the investment. I found the same thing true with reference to the inhabitants of Ohio, Iowa and Illinois, to which the gentleman from Lauderdale has referred, that although there is no constitutional limit upon the rate of taxation, the rate of taxation is much lower than ours, and when we place the limit as high as three-quarters of 1 per cent., it will have the effect of deterring those men who, when they see it, will properly think if the last few Legislatures are to be looked to as examples, that the whole constitutional limit will be levied. It may not be known to some of the members of this Convention, but the last Legislature passed an act authorizing each county in the State of Alabama to make a new assessment map of the county, assessing the lands of the county instead of by owners by sections and subdivisions of sections. A careful estimate has been made in the county of Madison and after deducting all United States lands and all State lands and lands of churches and charitable institutions, it was found that 25 per cent. of the land had escaped from taxation. I am advised by other delegates upon this floor with whom I have conversed upon this subject, that a similar state of affairs exists in their county. I should think that should be considered as a potent factor in determining whether or not this tax limit should be reduced. It is true those lands are not the richest and most fertile in any county, that largely they are mountain lands, barren lands; but those lands are all worth one or two or three dollars per acre, and the increase in the assessment will be enormous. Does the gentleman from Lauderdale and do the other gentlemen who have argued as to the license taxes in the State, believe in the event the present tax limit shall be maintained, that the Legislature will take off the iniquitous taxes

to which they refer? Is it not the sound judgment, is it not the honest opinion of the members of this Convention, that even if we put the limit at 75 cents the 75 cents will be expended and the privilege licenses still continue?

Furthermore, in some cases the privilege licenses should not be repealed. Is it not fair that a corporation whose stockholders have a limited liability to the amount of stock they own, should pay something for the special privilege that the law gives them? Is that an unjust and iniquitous tax?

There is another suggestion, Mr. President, that is urged, that in the course of five or six years, a panic or depression is due in this country and in the event of such a depression the assessment will be largely decreased? Upon that proposition I desire simply to throw out this suggestion: If such a depression does occur and if there is such a depreciation of values, that depreciation will be from the point at which the panic begins and not from the present time. They all admit that assessment values are increasing yearly and in the course of five years at the present rate of increase, granting the depression should occur at the time, the slump in values will be from the then values and will no more than reach to the rock bottom where we now are.

In other respects the advocates for the retention of the 75 cents on the \$100 do not argue fairly for this reason: They give you the figures as furnished to them by the Auditor, Treasurer, and Governor, but they do not consider the question what we will save by reason of refunding the debt and by reason of the quadrennial elections. I am advised by the Secretary of State that a general election in this State costs nearly \$200,000. It is my judgment that this Convention will establish quadrennial elections in Alabama and quadrennial sessions of the Legislature. In that we will be following only in the steps of the mother of Southern States, because I saw in the paper yesterday that Virginia had decided on quadrennial elections of the officers.

I think we can safely and wisely make this reduction. The margin of five mills as the Chairman and all the other members of the Committee have shown will provide for the unforeseen contingencies referred to so eloquently by the gentleman from Mobile. This Committee has been conservative. The figures show that the tax limit could be reduced to 60 cents on the \$100, but out of abundance of caution they have placed it at 65 cents and they tell us that the 5 cents they put in is a reserve to meet these very unforeseen contingencies that have so often been alluded to on this floor. I hope, Mr. President, that the report of the Committee as made to this Convention will be adopted.

MR. LOMAX—Mr. President, I do not pretend to be anything of a statistician, or to be an expert in matters of taxation.

Therefore, I shall not undertake to question the figures which have been furnished to this Convention by the Chairman of its Committee on Taxation, or those which have come from any other gentleman who has undertaken to predict what will be the resources of the expenditures of the State in the future.

But I care not how expert the statistician may be. I care not how learned in the subject of taxation the man may be who undertakes to make the prediction for the future, when you get beyond five or ten years in the future, you get into the field of speculation, and there lives no man who can tell what will be the resources or the expenditures of a State after that lapse of time. If this Convention were making a tax rate for the next year, or the next two years, or the next five years, then we might with confidence accept the predictions of the Chairman of this Committee and fix a rate. But the Constitution we make, if ratified by the people, as I believe it will be, will not be for any short period of time, but for a generation, or at least for twenty-five years. Such being the case, we ought to go slowly on this question of a reduction in the limit on taxation.

I have heard gentlemen discussing this question upon the floor of this Convention say that the gentlemen who are opposed to lowering the tax rate say this, that or the other thing. I hesitate not to declare that there is not a single delegate in this Convention who desires or wishes to put up the tax rate or who is opposed to the reduction of the tax rate. The opponents of the report of this Committee upon the floor of the Convention are not opposed to a reduction of the tax rate, but are opposed to a reduction of the limit on taxation. That limit was fixed in the Constitution of 1875, and, if my recollection serves me aright, in the course of time from 1875 down until this good hour, it has never been found necessary, and no Legislature has been found, which put the rate of taxation at the limit fixed in the Constitution except one. So that this impression of want of confidence in the courage of the Legislature or in the willingness or wish of the Legislature to reduce taxation is not well founded. I do not believe there can be found in the State of Alabama one man or 133 men who can be sent to the Legislature upon a demand by the people for a reduction of taxation and who, when they get here, find that the rate of taxation can be reduced, but that will vote for its reduction. Fixing a limit and fixing a rate are widely apart. We must fix the limit of taxation in view of future contingencies. We must take into account what may happen in the future. We heard the other day an able, eloquent and ingenious address from a distinguished citizen of Alabama which was no less able and eloquent and ingenious because it happened to be the propaganda of a new dispensation of political thought and action in Alabama, in which he quoted from distinguished students of economic and

industrial conditions the prediction that before many years had passed, the activity, the energy, and the aggressiveness of the industries of the United States in invading European home markets would combine the European nations in a war to prevent that invasion from continuing a war that would be backed up by fleets and armies, and the distinguished gentleman who quoted that prediction did not undertake to refute the possibility thereof. Should such a thing happen and this country be involved in such a war, in what condition would the people of Alabama be with a 65 cent limit on taxation? A war like that would involve the exercise of all the wealth and power and the capacity of this country to successfully maintain. A war like that would shut down every industry in the State of Alabama. It would paralyze the coal and iron industry from which we expect so much in the future. It would close down every cotton factory in the State of Alabama. It would make the work of the agriculturist unremunerative and would reduce him to poverty and want. Valuations would go down so that within a short period, unless we had a higher limit of taxation, the honor and credit of the State would be absolutely destroyed.

MR. HINSON—May I inquire what the gentleman is in favor of, are you in favor of the limit in the present Constitution?

MR. LOMAX—Yes.

MR. HINSON—Then I make the point of order, Mr. President, the gentleman is not addressing himself to the question before the House, which is the amendment of the delegate from Hale fixing the limit at 70 cents.

MR. LOMAX—My remarks apply equally to the amendment of the delegate from Hale.

THE PRESIDENT—It seems to the Chair that the gentleman is properly within the limit of debate.

MR. LOMAX—I regret extremely that I have been so unfortunate in what I have said that I have not been able to inform my friend the delegate from Lowndes, of the position I take. I shall undertake to be more explicit and careful in the future, so that whatever I shall say shall have at least some applicability to the subject at hand.

Reference has been made, Mr. President, and frequently, to the vast possibilities of revenue which lie within the power of the State from the enormous increase in the building of cotton factories under our recent law which exempted them from taxation; and a vast estimate was made of what would come to this State from taxation by reason of the enormous value of those cotton factories in 1907. Have the gentlemen forgotten the recent little flurry in China? Every man acquainted with the cotton trade of

the South knows that by reason of the little misunderstanding which occurred the other day in China every single cotton factory in the South that dealt in the coarse grades of cotton goods that went to the Chinese markets was absolutely paralyzed, and either had to run at a loss because they did not want their labor dispersed or run away, or else some of them had to shut down from time to time in order to save expenses.

MR. FOSTER—Would it not be better to remove all limitation in order to meet that great war you are expecting?

MR. LOMAX—I do not know that it would be better to remove all limit. The reason it would not be is that the people of Alabama are accustomed to a limit on the rate of taxation, and another reason why it would not be better to remove all limit is that the gentleman from Tuscaloosa and I stood upon a platform which pledged the people of Alabama that we would not raise the limit of taxation.

MR. FOSTER—Are we not equally pledged to reduce it if possible?

MR. LOMAX—Yes; and the very proposition to which I am addressing myself is that we are not pledged absolutely to reduce it because it is not practicable to do so.

MR. BANKS—Would it not be better to have no limit than too low a limit?

MR. LOMAX—I am afraid my friend was reading a newspaper when I answered the same question put by the gentleman from Tuscaloosa. I say it would not be better, I say for at least thirty years the people have been accustomed to a limit—

MR. BANKS—The gentleman misunderstood my question. I asked the gentleman if it would not be better to have no limit than too low a limit.

MR. LOMAX—Oh, certainly, I beg pardon of the gentleman. I did not catch his question. It certainly would be better.

I was proceeding to say, gentlemen of the Convention, and Mr. President, that the small affray in China the other day almost paralyzed the cotton goods industry of the South. No man knows when the Yellow Dragon of the East will wake up from his slumber. No man knows when the civilized powers of the world may be engaged in a war with China, which will absolutely shut off and destroy any possibility of trade with that country and, when that time comes, where will be your income from your cotton factories, nine-tenths of which are engaged in the manufacture of the coarser grades of cotton goods that go to that trade? Either they must shut down, or they must spend every dollar of their capital and every dollar of the increased capital they might get for

the purpose of putting in new machinery to make goods for other trades.

When you are making a constitution, gentlemen, you must not look at the immediate present, or the immediate future, but you must look at the possibilities that lie in the vast future beyond. A great many promises have been made to us in recent years, of the increased trade which would come to America by reason of the acquisition of the Philippine Islands, and we of the South have been told that with the Philippine Islands in our possession, a vast trade would come to us by reason of our manufacture of the cotton goods and the production of the provisions necessary to clothe and feed those people. That there were millions to be fed and clothed, and it would make the South blossom like the rose. Millions to be fed and clothed; fed on a banana, and clothed with a breech cloth. We have been in the entire and absolute possession of the bay, the harbor and city of Manila for a long period of time, and statistics show that almost nine-tenths of the increased trade with the Philippine Islands has been in the trade of American whiskey for the American troops. Now we are not engaged very largely in the manufacture of that article, and that in which some of our independent citizens are engaged, the white looking liquid, the aroma of which lingers upon the breath even after the second day, never gets exported further than the mouth of the mountain canon where it is manufactured, and where the revenue officer goes with fear and trembling.

Let us look at another phase of that question. The man who thinks that the convict system of Alabama is going to remain for another generation as it is today is a dreamer. The time is coming, and it is coming speedily, gentlemen of the Convention, when there will be an absolute, an entire and a radical change in the convict system of Alabama. You cannot always farm out your convicts as you do now. As it is today, the Convict Department is not only paying into the State Treasury an enormous revenue, but it is absolutely and entirely supporting the administration of the criminal laws of this State. When a change shall come in the system, and it must come as civilization grows and enlightenment extends, you will not only strike down the revenue which you derive now from the convict system, but you will find yourselves face to face with the proposition that the State of Alabama must provide some other means for the administration of the criminal law at a vast expense of money. With the small surplus that is promised us by the Chairman of this Committee, how will you make provision for the administration of the criminal laws in the sixty-six counties of Alabama? It is impossible to do it.

Members of this Convention cannot have forgotten the vast amount of money which was expended within recent years, when a quarantine against smallpox was inaugurated in Alabama. With

the small surplus that is promised under the conditions we have here, where would the funds come from to meet another epidemic of that sort, or an epidemic of yellow fever, or any epidemic that required a vast expenditure of money?

We have had strikes in Alabama. The time was not many years ago, when encamped on the hills of Jefferson County was every State troop in Alabama, and they stayed there for weeks at an expenditure of enormous quantities of money. Are we to be free from strikes in the future? No man can say so, because there is but one way to judge the future and that is by the past, and the time may come, and it may come at any moment, when by reason of a disagreement between operatives and employers there will require the use of every armed man in Alabama to preserve the peace. Money will have to be expended for the transportation of troops, for the pay of those troops, and for their maintenance. This may come once a year, it may not come in ten years, or it may come every year, and I submit that under the figures of this committee no provision is made for this sort of thing in the future.

Now gentlemen have asked the question if I do not think that the people will be grateful to us for giving them this reduction in the tax limit, or whether I believe that they have not got sense enough to know what they want. I believe, Mr. President, that the people have not sense enough to know what they want, and sense enough not to be grateful for a small reduction of taxation, which is to be made up by increased assessments, and which will imperil the honor of this State. The honor of the State of Alabama is as dear to the humblest citizen as the small tax reduction that this change in the limit would take off of him, and he is not only not going to be grateful to you for making such a reduction, but he will say to you in no uncertain tones that to create a little cheap popularity for this Constitution before the people you have sought to deceive us, and you have done worse than that. We want the honor of our State maintained. We want her to go forward in her career of progress. We want the time to come when on every hillside in Alabama there will be a coke oven which shall make her the center of the industrial world, and the smoke of her factories and furnaces shall be like a "pillar of cloud by day," calling the children of toil into this land of happiness and contentment.

I appeal to you, gentlemen of the Convention, not to imperil these grand possibilities. Not to make it so that the honor of our State will be imperiled. Keep the time from ever coming again when outside the Constitution we must go to the marts of commerce in New York and pawn our Auditor's warrants for the money with which to pay our debts. Let us be in that position where we can take every advantage of the reduction in interest rates that may come, not tomorrow, or the next day, but at any time in the future. Let us have the manhood to say that rather



than the cheap popularity which a small reduction in the limit of taxation will give to this Constitution before the people, that we stand first, last and all the time for the honor and the glory and the dignity of our grant commonwealth. (Applause.)

MR. HEFLIN (Chambers)—The right Mr. President, to tax the property of the people was granted by the people themselves. They realized that it was necessary, to establish and maintain a governmental power, to lodge in the fundamental law of the State the right to tax property in order that revenues might be derived to support their civic institutions. While they willingly lodged this right in the Constitution of our State, they did it in the belief that it never would be abused, and in the hope that as the years went by, and as the population increased, and the agencies of industry increased, and as the State became rich and powerful as she is today, that from time to time the limit in taxation would be reduced rather than raised.

Mr. President and gentlemen of the Convention, I concede to the opposition to the sixty-five cent limit honesty of purpose, as I do to those who champion that rate. I do not say to them, as they say to us, that we are playing for temporary popularity in this Convention, or appealing to the citizens of Alabama along that line. We hurl any such sentiment as that back into their teeth. We stand here doing what we think is right, in asking that this Convention reduce the tax limit in the Constitution under which we now live. Because we ask this on behalf of the people who are back and behind us in this great movement, are we to be charged with an attempt, or a desire to play for personal popularity? No, Mr. President, the intelligence of this Convention will mount above a plane like that. It will come upon a high plane, and reason about this great question and settle it as becomes true Alabamians.

We are told, Mr. President, that we would put the State in a terrible condition if we should make this reduction. Gentlemen seem to forget that we have given the Governor the right to borrow three hundred thousand dollars, and that three hundred thousand I dare say gentlemen of the Convention, will tide over any state of circumstances, it matters not how embarrassing they may become.

We are confronting the people of Alabama, or will ere long, with a new Constitution. It is not like a Legislature that assembles here and adjourns and reconvenes every two years. It is something new. It is odd. Twenty-five, fifty and sometimes a hundred years roll over the heads of States before the fundamental law is changed. The people of Alabama are looking to this Convention for a wise document in the way of an organic law. They are not entirely pleased with the progress that the Convention has made, it is true, but they do not understand what this Convention is doing and the work that it has to do. But when

we close that door, and go away from here with a Constitution to be stamped by the approval of the sovereign voters of Alabama, we must have a document that will appeal to their judgment, to their sense of right, and their patriotism, and if you go out from this Convention with the proper suffrage plank, and a reduction of the tax, I care not what the opposition may be, it cannot stand before the people as they march with this Constitution to glorious approval. What we need, Mr. President and gentlemen of this Convention, is honest returns, and honest assessments, and proportionate taxes. Millions of dollars worth of property in Alabama escape every year. The poor man with his goods in sight bears the burden of taxation today. The farmer with his lands and stock where the assessor can see them, and where the neighbors can talk about them, makes it a matter of common knowledge, and he cannot hide it away. But the man with private securities, the man with his money hoarded away, and corporations, too, largely escape their fair share of the burdens of taxation in Alabama. Reduce this limit, then strike down this inequality of the law along the line of taxation, and let every man march up to the full line of his duty, and give in his property as he should, and you would not even need your sixty-five cents. Thirty-seven and a half would be fully ample. In a New England State, in a small town, a few years ago, there lived a man, supposed to be wealthy. They supposed him to be worth about a million of dollars. He gave in his property at one hundred thousand. He died, and his executors scheduled his personal property, and it was found that that man, in that small New England town, was worth six millions of dollars, and as soon as the tax assessor of that city place it upon the assessment roll, it reduced the tax rate one-half in that town. This illustration I gathered from a speech of ex-President Harrison on the subject of taxation.

I do not desire to detain this Convention, and I will not do so, but gentlemen tell us that we must leave it to the Legislature; that the Legislature will adjust the matter; and my distinguished friend, the gentleman from Lauderdale, has told this Convention that in 1896, the Legislature appropriated so much, that they doubled that nearly in ninety-eight, and they doubled it in 1900. With due regard and respect to the members who composed the last Legislature, they were characterized as being too extravagant with the people's money. It was talked of all over the State. Your newspapers had a great deal to say along that line. Gentlemen suggest here that this State and a few others, are the only ones that have a tax limit lodged in the fundamental law of the State. Well, the sooner the other States fall into line, the better it will be for them. I dare say that the delegates of this Convention are convinced that if you were to remove all tax limit, you could not, in ten years, have such a Constitution ratified by the tax payers of Alabama. You remove that limitation, and trust it to the Legislature, and they will tell you the last Legislature appropriated

everything, and went to the limit in the old Constitution, and they would go to another one if you made it a dollar, or a dollar and a half, or any other amount.

MR. OATES—I do not wish to interrupt the gentleman from Chambers, but I want to suggest to him, in connection with what he has said, as a part of his remarks, that there never was any constitutional limit upon the rate of taxation in this State until the Convention of 1875 put it there, and the reason of that was that the carpet-bag Legislature preceding had appropriated everything in sight and anticipated everything to come, and rendered the State and many of the counties insolvent.

MR. HEFLIN (Chambers)—I thank the distinguished gentleman, Mr. President, for that suggestion. We have long since passed over the shattered ruins of reconstruction. Alabama has walked out from under the gloomy clouds that hovered over her in that awful time of distress and defeat, and, marching like a young giant, up the mountain side to victory and glory and true progress, she moves today unfettered and unhampered by anything that clung to her and menaced her limbs in reconstruction days. Seventy-five cents was necessary then; sixty-five cents is fully ample now.

I am fully convinced, after hearing the able argument of the chairman of this committee. He comes in with a report to which there is not one dissenting voice from the committee, as I understand it. It is the unanimous verdict of that committee that Alabama should reduce her tax limit. The chairman of this committee has spent no little time and toil in the investigation of this subject, and I consider that his arguments, and those who have stood around him in this fight, remain until this good hour unanswered by the eloquent gentlemen of the opposition. I am thoroughly convinced, by the figures, by the arguments, and by the evidence that has been adduced here in this Convention, that Alabama can easily continue per progress with this sixty-five cent limit. A great and growing State, with her marvelous resources, her myriad advantages struggling, as she does, higher and higher, under the guidance of her civic masters—the people themselves—she will rise higher and higher in the scale as the years go by, and, in conclusion, I have only to say, if you will reduce the tax limit and adopt a suffrage plank that will meet the approval of the white people of Alabama, this Convention's work will be endorsed by the sovereign citizens of the State, and they will rise up and call this Convention blessed.

Mr. President, I am done. It has been suggested to me that the previous question should be moved. I do not like to make a speech on a subject myself, and move the previous question without giving others an opportunity to be heard.

MR. JENKINS—I hope before the gentleman moves the previous question, he will allow me to quote some figures from the Auditor's report. I have in my hand the Auditor's report, and I think any citizen in the State, and especially any member of this Constitutional Convention, can take this Auditor's report and on the face of it, taking the estimate of values as made by the distinguished chairman of the Committee on Taxation, see as a man who runs, can read it for himself, and it will show that it would be unwise, and very dangerous to adopt his suggestion.

But I do not grant to the distinguished chairman figures that I am unwilling to admit. He figures on a basis of \$276,000,000, when never in the history of our State before has so high a valuation of property been attained. The average for the past ten or twenty years has never, exceeded \$266,000,000, and last year the Auditor based all his calculations on \$266,000,000. How do we judge the future? We judge it by the past. Watch the wheels of nature in relation to the affairs of man, and by the past of man, is the only way under the sun that we can judge the future.

MR. BROWNE—Will the gentleman allow me to interrupt him a moment?

MR. JENKINS—Certainly.

MR. BROWNE—Does he doubt that the taxable values for the next fiscal year will be two hundred and sixty-six million.

MR. JENKINS—Well, the figures have been offered for that, but I am judging by the past.

MR. BROWNE—Will the gentleman allow one other question?

MR. JENKINS—Yes.

MR. BROWNE—Does he know upon what the Committee predicates their estimate that there will be an increase of at least \$10,000,000 for the next fiscal year?

MR. JENKINS—Yes, he has written around, I understand, to all the Probate Judges in the State, but the Probate Judges may have made some mistakes. They are not the officials to get this matter up. It is the duty of the State Auditor to give us these figures, and not the Probate Judges of the State. He should have written at least to the Tax Assessors, and not the Probate Judges, because I dare say there are not ten Probate Judges in the State as conversant with tax values as the Tax Assessors.

MR. BROWNE—Does the gentleman know where the Tax Assessor files his books, when they are made up?

MR. JENKINS—Yes, he generally files them in the Probate Office, when he has not got them at home working on them.

But I want to say the gentleman is basing all his calculations on the present year, as if all the years to come were going to be like the present year, and I make the deliberate statement that this fall, if cotton should go to 3 cents a pound, and we have no reason to say positively that it will not go there, the tax values next year will shrink at least 33 1-3 per cent. You cannot base tax values only on the price of agricultural, mineral and mining products, and if these products go down, our tax values are going to fall. In less than ten years cotton has sold in this country for 3 1-2 cents, and many were glad to get 4, and last season is brought 9, 9 1-2 and 10. Now that is quite a difference, but we have no assurance that the present condition will continue.

MR. BROWNE—May I ask the gentleman a question?

MR. JENKINS—Certainly.

MR. BROWNE—What year was cotton worth 3 1-2 cents?

MR. JENKINS—I have the receipts at home, showing 3 1-2 cents on them. I do not remember the exact year.

MR. BROWNE—Does the gentleman know what the taxable value of all the property in the State was during the year cotton sold for 3 1-2 cents?

MR. JENKINS—I do not think that has any connection, because the taxable values are returned in the spring and these prices are made in the fall, and the prices affect the following year and not the year in which they are made.

MR. BROWNE—Well, the year after, what was the taxable value of all the property in the State? The year after cotton was worth 3 1-2 cents.

MR. JENKINS—I do not know. It was less than \$250,000,000, and, Mr. President, I stand here and say that this Committee is basing the calculations of every year from now up to doomsday on this year, and that we cannot do it.

THE PRESIDENT—Will the gentleman suspend?

MR. HEFLIN (Chambers)—Before the announcements are made I desire to ask indefinite leave of absence for Mr. Duke on account of sickness.

The leave was granted.

Leave of absence was granted Mr. Walker for Monday and Tuesday, Mr. Willet and Mr. Wilson (Clarke), for today, and indefinite leave to Mr. Case on account of sickness.

Thereupon the Convention adjourned until 3 p. m.

## AFTERNOON SESSION.

The Convention was called to order by the President, and the roll call showed the presence of 81 delegates.

THE PRESIDENT—The gentleman from Wilcox has the floor.

MR. JENKINS—Now I have some figures that I want to read to this Convention. The committee put the tax rate at six and a half mills. We are levying now for old soldiers one mill. We are appropriating \$800,000 for the public schools, \$550,000 from the general appropriation, and \$250,000 special appropriation making \$800,000. \$276,000,000 is the valuation of the property as given us by the committee. Multiply that by three mills and it results in a tax of \$828,000, and when you deduct the expenses of assessment, it will not give you \$800,000 for public schools. Now we can't cut that down. The Democratic platform pledged us to take no backward step in education. So it will require at least three mills to pay the standing appropriation for public schools. It requires one mill to pay the old soldiers. There is no debate on the proposition that makes four mills. Four mills from six and a half mills leaves two and a half mills and multiplying the \$276,000,000 by that gives you \$690,000. That is our revenue minus the license fund. Now a conservative estimate of the license fund and funds from other similar sources which I hold in my hand for the year ending September 30, 1901:

Licenses .....	\$155,000
Solicitors' fees .....	20,000
Insurance department .....	50,000
Corporations, charter fees .....	12,000
Railroad license tax .....	12,500
Telegraph, express and sleeping cars .....	12,000
All other sources .....	25,000

Those foot up \$286,000. A liberal estimate would be \$300,000 from license, but put it at \$310,000 and add to it the \$690,000 and it gives you \$1,000,00.

Now what are your expenses to come against that? If you turn to the Auditor's report, Page XXXVI, you will see the different expenses. For executive officers, which added to the expenses of the judiciary, \$106,000, military department \$24,000, mine inspectors \$4,000, State geologists \$7,500, insurance department \$2,500, railroad department \$11,000, health department \$13,000. I omit the agricultural department and the pension department for this reason that there is no guarantee in the world that the revenue derived from the agricultural department is going to remain, because there is a strong sentiment in the State to repeal the tag license. A bill for that purpose passed the Lower House in the last Legislature. It went to the Senate and it got a ma-

jority of the Senate but did not get the requisite three-fifths vote and failed. The bill was adversed by the committee in the Senate and required three-fifths to pass. But it will come up again and it is going to be cut down, if not be wiped out. Amounts to the educational and benevolent department foots up \$1,148,000. In that is included the public schools for which I have already estimated and deducting the public schools from that it leaves \$420,000 for the educational and benevolent institutions. State institutions like those at Auburn and Tuscaloosa and the Girls' Industrial School, Institute for the Deaf, Academy for the Blind, for Negro Deaf Mutes and Blind, Industrial School for Boys, A. and M. College, University and Normal colleges. That foots up \$420,000.

Now the general expenses foot up \$547,000 and this added up with the other items above named will give you \$1,177,000. These are the actual every day expenses of the government. They are bound to come and you have to have the revenue to meet them and you have but \$1,000,000 left on the basis of the valuation of property furnished us by the Tax Committee. That leaves a deficit of \$177,000 every year.

Now, I have left out of the estimate the agricultural department of \$47,000 because I do not believe we can count on that for all time to come. I firmly believe that the tag license will be reduced or repealed and that source of revenue cut off.

I have left out the convict department. And why? Because while it is true there is \$125,000 to the credit of that fund but there is a great deal of expense connected with it. There is the expense of \$114,000, hardly a profit of \$25,000 and the history of that department in this State is that it won't make the revenue.

MR. CUNNINGHAM—Can I ask the gentleman a question?

MR. JENKINS—You can if you wait until I get through.

MR. CUNNINGHAM—Is not the expense of the convicts part of the expense of \$550,000 and is it not a fact that the convict department is paying annually more than half of the deficit the gentleman is counting off?

MR. JENKINS—Feeding the State prisoners is in that but the salaries of the convict department are not, neither are the costs, bills of the courts and maintenance.

I say, Mr. President, that there was a time in the history of the State when the convict system did not pay a revenue but was a heavy drain on the treasury. That time may come again because there are a lot of people up in Jefferson County who have been contending for years gone by that the convicts should be taken out of the mines, and whenever you take them out of the mines there will come a bankruptcy in that department instead of a profit. That sentiment has been going on for years and there

is no telling what the future will bring forth. The convicts may be taken out of the mines and put on the farms, and instead of their being a revenue of \$125,000, they may cost the State \$300,000, as the State farm has cost us during the last six years. Now I maintain that in making figures of the revenue for all time to come, that that sort of question should be eliminated and not allowed to come in. The wise and economical administration and successful conduct of the department in the last few years is no guaranty that it will be so for all time to come. These are the figures and you cannot deny them. Take your pencil and work it out, and it will show just as I have stated it.

There is another question: We have on the statute books a law that has been vilified, abused, despised—I won't say cursed—but it has met the condemnation of the people over the State and that is the back tax law. There is no question in my mind but that the time will come when that law will be repealed; and when you repeal that law you are not going to see valuations go up and stay up like they have in the last four years. That is going to affect the question, so will the tag license probably be taken off, so will the convict system badly administered, so will the expenses of a complex election machinery which we are bound to have under our new Constitution. You are going to have new expenses you never had before. It will probably cost the State \$100,000 to hold the first election under the system that we are going to adopt. In addition to that, there will be a falling off in the poll tax receipts of at least \$50,000. We have had \$150,000 collected from that course, but when you say to a man, "You need not pay the poll tax," there won't be one negro in a thousand that will pay the poll tax, and the result will be that the fund will go down. You are face to face with these things, and you must think about them. And, in reply to the gentleman from Chambers, who says we ought not to let our State be shackled as she marches up the hill of progress, I want to say if you put a constitutional limit of six and a half mills upon the feet of that fair damsel as she walks up the hill of progress, you will shackle her so that she cannot walk with the steady stride and even step she ought to. Let her go on the road of progress untrammelled and unfettered, and walk up that high hill looking forward and upward without feeling the burden and shackles of an unjust tax limit upon her.

MR. HEFLIN—May I ask the gentleman a question?

MR. JENKINS—When I get through.

MR. HEFLIN—Did I make any remark about shackling a damsel? I desire to disclaim any intention of doing that.

MR. JENKINS—I was merely using the figure the gentleman started. The gentleman compared the State to a woman and talked about shackling her feet. He would hardly compare it to a man.



I want to say as a State, we are enjoying great prosperity, such as we have not enjoyed for many years in the past, but if you vote this proposition in here today you will see the sun of prosperity, which is now riding so high and clear near its zenith, soon begin to falter and waver in its course, and, with sad and sorrowful countenance, you who sit here will see it begin to sink toward the west in a decline from which it will be many years before it returns.

And another point right here and I will close. There is not a word, there is not a breath that comes floating on the breeze from the people of Alabama to this Constitutional Convention demanding this reduction in our constitutional limit in the rate of taxation. The only demand that the people of Alabama have made to the delegates was that you should not raise the limit or change it in any material way so as to affect their prosperity and growth. And you gentlemen come here and voluntarily offer them something that they have not demanded. The people of the State are not demanding this proposition, and have not expected it, and you should not give them something for which they didn't look. Furthermore, you not only strike down the credit and honor of the State, but you allow the same tax which you take off in a general way to be assessed in a local way, so that there is no real reduction in the people's taxes. It is an apparent reduction and not a real one, and the only result of which is to jeopardize the honor, the integrity and the fair name of the State of Alabama, and when you do that, you will do a great wrong to the people of Alabama.

MR. BLACKWELL—I am sorry I cannot agree with the Committee in their report. If I thought I could, I would greatly prefer voting in favor of the reduction.

Very briefly, I want to allude to some statements that have been made. The first statement is that while the Legislature has the power to reduce the taxes, and while we insist they will do it and it is right, the opposition say they are afraid to risk the Legislature.

I want to call the attention of the Convention to the fact that the law fixing a limit of 75 cents on the \$100 has been in existence since 1875, and yet, as a matter of fact, this limit of seven and a half mills tax has only been used in three years during that time, although it has been within the power of the Legislature to use it the whole of the period.

In the year 1876 they went to the limit the Constitution allowed, 75 cents on the \$100. Then for three years they had 70 cents, or seven mills. Then followed six and a half mills for five years, and then six mills for two years, then on down to four for three years. The only way we have of judging what the Legislature will do in the future is by what the Legislature has done in

the past. The only two years, aside from the first that I have mentioned, in which the limit of the taxing power was exercised, was the last two years. Those in addition to the first one year under the Constitution make the three years. If we are to judge the Legislatures of the future by the Legislatures of the past, what right have we to say that the Legislature will not reduce the tax as they see the revenues of the State will justify and permit of the reduction? No one can say that they have failed to do it heretofore. Then, why does anyone presume to say they will fail to do it hereafter. You cannot judge of what is to come except by what has already passed; and if you make that the standard, you must admit as a matter of fact that as the opportunity presents itself, the Legislature will make the reduction, they have uniformly made it.

Now, there is another statement made, that as a matter of fact, as you are reducing the rate of taxation you induce the people to assess their property at better values. The figures as laid down by the Auditor do not justify any such statement. They say the highest assessed value that we have had was \$275,000,000 in 1891, on the four mill basis. I admit that is true, but it began to decline and on that four mill basis it declined, and continued to decline; and the highest assessment we have now is on a seven and a half mill tax.

MR. BROWNE—Was not that heavy decline after it reached \$275,000,000 on account of the panic?

MR. BLACKWELL—Yes, that may be true, and I will come to that quicker than I intended. The people of the United States have panics oftener than any other people in the world. In England panics occur about twenty or twenty-five years apart. Panics with the Dutch occur about 100 years apart, because they are a very conservative, very painstaking, very careful, cold people. But in the United States the very air we breathe is intoxicating. The foods we live upon are intoxicating. A man makes a dollar easier in the United States than in any other part of the globe, and the result is he risks it oftener in speculation than any other people in the world. So the result is we have more panics; and when a panic occurs and settling time is had, directly after that only the gilt-edged people have credit. Then the next year credit is extended to a greater number and so on and on until all worthy people are embraced. Then the spirit of speculation running rife induces the American man to risk more and take in a broader field, and by and by the ability to pay promptly is lacking. Then everyone begins to want what is due him the minute they cease to pay, and a man goes to his debtor, who owes him \$1,000, and tells him, "Pay me what you owe me," and the result is that every ten or fifteen years spreading over all kinds of credit, the settling time comes and every man puts his hand to the throat of another and says "pay me what you owe me," and when the settling time comes you have a panic which the gentleman from Talladega says

induces falling values. We have had the speculative fever going on always, and while I trust we will never have it as we had it in 1891, still that spirit is abroad and we must take cognizance of it. Dollars are made easier here than any other place in the world, and therefore we risk them more freely and no one can see far enough down the vista of the future to tell what is in store for us on this line.

Gentlemen have been questioning and mistrusting what the Legislature will do. We show that the Legislature has reduced taxation every time an opportunity has presented itself and that we have only had three years out of twenty-six and that the limit of taxation has been reduced. Then why is the gentleman afraid of the legislature? Then if the legislature has satisfactorily handled this matter and there is danger of having a deficit anywhere if this limit is reduced, why is it not more conservative and sounder business principles, even admitting the gentleman from Talladega (Mr. Browne) is right, to take the safe side, to take no chance rather than have what he offers and take chances of getting through.

There is another thing to which no one has alluded. We are going to need more money than we have ever yet had before. The attention of the world is attracted to Alabama's resources. The Chairman of the Committee said the other day that he was connected with an immigration enterprise and that he wrote letters to people to induce them to come to Alabama and the first thing they wanted to know was how are your churches and your schools? You have to have money for schools and churches. Does the gentleman pretend to say it is not a good investment to increase the school fund greater than we have if we can stand it? Don't we know when we educate the people we increase their capacity and don't we know a man morally and intellectually educated makes every acre around him worth more money and increases the value of the property of the State of Alabama?

Not only is that true, but there is sleeping in the other end of the Capitol a bill proposing to pay the old soldiers of the State of Alabama \$100,000 more money than we give them today.

I do not think we are able to pay the soldiers of Alabama as much as we pay the United States soldiers. For four years as an officer of the United States government I paid the United States soldiers. We paid out \$2 a head for every man, woman and child in Alabama and we do not complain of the pension of the soldiers of the Federal army. Now, if we get more money and if there is anything that we are justified in spending it for, ought we not increase the pittance and pass that bill in the Senate giving \$100,000 additional to the old Confederate soldiers. They do not complain. They have gone unmurmuringly; and yet every empty sleeve, every lost leg is an eloquent appeal to the people of Alabama showing the needs of these men who, when the tocsin of war

sounded in Alabama recognized Alabama as their native mother and shouldered their musket and went to the forefront where the bullets fell thickest and the battle waxed hottest. I do not ask you to give to the Alabama soldiers what we are giving to the Federal soldiers. That would be \$4,000,000 for Alabama to give, but I say if there is a possibility without hurting the people of Alabama by allowing that limit to remain of being able to increase that pittance to them, ought we not to do it? These are the men who have made the history of this country. These are the men whose acts and deeds are reporting to the present generation and will report to generations to come the courage, the manhood and the heroism that this country has possessed. These are the men, the worn out crippled men, for whom we should weave laurel crowns to place upon their brows. They put themselves up to stop the bullets of the enemy, and I for one want to go on record that I am in favor of fixing it so that we can give to that grand army of heroes that tardy justice to which they are so much entitled.

MR. SANFORD (Montgomery)—I know that the Convention is growing very much wearied with this discussion, and notwithstanding that fact, I ask its indulgence for a few minutes. If a stranger had entered the hall, and had not known the character of the assembly, he would have supposed it was an association of bankers greatly disturbed lest the interest on their bonds should default, or that there were men here anxious to sell bonds. That is not a fact. We are here to make a Constitution for the State. The borrowing of money is an unfortunate incident in the history of Alabama, as the issue of bonds has been. If she had never been able to borrow one dollar, or to sell a solitary bond, the influence and the power and welfare of Alabama would have been greatly augmented. We must not suppose that owing bonds and selling bonds and paying interest upon bonds is the chief object of government. I may be pardoned for reminding you that for forty years after 1790 such things as bonds of a State were hardly known in the United States. After the war of 1812, when the general government had become indebted to the extent of \$13,000,000, there were no such State bonds. Such a thing was almost unknown in the history of this country, but in 1830 the people entered upon wild schemes of speculation and reckless enterprises. Alabama, in 1837, issued bonds to the extent of \$5,000,000, and all the States engaged in this speculative mania, until 1840, when the failure of a bank in Pennsylvania precipitated a great monetary crisis and great depreciation of property in this country. Then Pennsylvania, Mississippi and Maryland defaulted, as also Michigan, Illinois, Indiana and Louisiana. All of them afterwards paid their indebtedness, except Michigan, Louisiana and Mississippi. I only mention these things to show you that while we are all anxious to preserve the honor and credit of the State of Alabama, that merely to pay interest is not the chief object of government, and even those great

States who were in arrears are now in the very front rank of this republic. But I am very much amused—I beg pardon—interested, in some of the discussions. The gentlemen opposed to the reduction first stated to you how much money is necessary to meet your present liabilities, and then they go forward and repeat item by item, every one makes up the sum so as to impress it, that it is about twice the amount that will be the amount disbursed by the 30th of September, 1901. Now, we are here for the purpose of making limitations. We are here for the purpose of establishing offices and defining the duties of those who occupy them. We have already limited the power of the people to elect one man a Governor oftener than once, and thereby disfranchise him, the people so far as that office was concerned, though faithful, efficient and competent men, are deprived of the right to electing him again. Why not limit the agent that has the power to put burdens upon the people? Why do you limit individuals from aspiring to office, and limit the people in their choice of officers, and yet decline to limit those men who have power to place burdens upon the people? The more you limit power, the more you expand liberty; the more you curtail authority, the better it is for the freedom, and, therefore, I am for limiting the Legislature in its power of taxation to the utmost point that can safely be done, and meet all of our obligations—interest on bonds, the ordinary expenditures of State, and whatever may be necessary. One gentleman says, why, if we should have war, all of your factories would shut down; your steel plants would go out of blast; your iron furnaces would close, and, therefore, we must not limit taxation. If all those things happen, we would be poorer then than we are now, and if we were poorer then than now, ought not the taxes to be lower, and ought we not to be more limited in the power of taxation? So it seems to me that that argument is utterly fallacious—the poorer we are the less you ought to take from us of food, raiment and shelter; and the less labor you ought to require of us to pay taxes. Another gentleman says, why, my little town of Florence is so oppressed with taxes in the way of licenses and privilege taxes that the people are beginning to sell their property. If that be so, if every little hamlet, village and town are oppressing the people, ought we not to see that the Legislature is still more restrained from taxing the people and adding burdens—the very reason why the Legislature of Alabama should not be permitted to do what the little municipalities everywhere are enforcing upon the people. Now it seems to me, Mr. Chairman, that most of the argument has arisen from apprehension. Apprehension based on what? On the apprehension of two very distinguished and much esteemed friends of mine from Montgomery County. Both have been Governors with great honor to the State and much credit to themselves, and all their argument is based upon their experience—one of seven years ago, and the other of nearly five years ago. They remember the difficulties that beset them when they bor-

rowed money, it is a nightmare still upon their blessed spirits. They are afraid that the Governor shall not be able to borrow money. It is a mere conjecture. There is not any argument on that fact except conjecture and school-boy calculations. The Committee, on the contrary, has recently made investigation of the condition of Alabama. They find from examining the very documents that our friends have examined and calculated with so much persistency—besides correspondence with leading men all over the State. We must remember that when this limit of 75-100 was fixed that Alabama, in round numbers, had about 1,200,000 people. In 1900 we had 1,800,000 people, half as many again and a corresponding increase in wealth, and therefore 75 cents on the \$100 was all that was necessary as a limit in 1875. Twenty-five years later with 33 1-3 per cent. increase in population and in wealth, cannot we safely put it at 65 cents? One gentleman said here—it is a little cheap popularity. That was rather an unjustified remark as applied to many of these gentlemen who are just as capable and patriotic as those who insist on holding the limit up to 75 cents. I might, if I were as unkind, say the reason why you wish it done is because, possibly, you are the owner of bonds in mills and you do not wish any mills built, and you keep up the high rate of taxation so they will be afraid to come and compete with you. Others might say they are bondholders and you are afraid your interest will not be paid if the limit be reduced. All of these apprehensions are absolutely futile. There is no ground for them. On the contrary, the argument of those delegates in favor of it, is based upon more recent calculations, investigations and ascertainment of facts than those that are opposed to the reduction. Why the very reduction itself to 65 cents is a compromise. The distinguished ex-Justice of the Supreme Court said that we could have reduced it to 60 cents, but out of deference to our timid friends, we put it at 65 cents. So 65 cents itself is a compromise between what really ought to be the limit and the timidity of some very estimable gentlemen with regard to the payment of interest on bonds. So, my friends, we should by all means, if possible, and we believe we are able to do it, reduce this limit. The poorer we are, the less we should be taxed. Every dollar, every mill of taxes, takes away from a poor man some necessary of life. Every mill that is saved gives him some necessary of life, gives to the rich some article of luxury not heretofore enjoyed, gives to the man of ordinary circumstances a comfort that his little family needs. Our friends here are mistaken in the argument—they speak of it as if the Legislature had power to limit it. It has no such power. They speak of it as if it were to reduce taxation, it does not reduce it five cents, it is merely to fix the limit beyond which hereafter the legislature shall not go. The tax of 75 cents in all probability, will be in full force until November, 1902, and therefore, there is no immediate danger and you have time to see the development of the country.

One member says he wants elasticity in the Constitution. How can elasticity in the Constitution develop the country? One gentleman speaks as though the reduction of the tax rate would impede the progress of Alabama. Gentleman have heard of the horse who, the more he carried, the faster he ran. I never heard of but one instance, my friend Mr. Abercrombie, who said of his horse Buck-Rabbit, the more weight you put upon him, the higher he jumped. So the more burdens you put upon the people, the more prosperous they come—the less weight they carry, the slower they run. That, my friend, is not in accordance with human experience either with the success of men or the fleetness of horses. Now, Mr. Chairman, I have but one word more. I am amazed at the contradictory statements. My esteemed colleague from Montgomery says that if you were to reduce this rate, this limitation of taxation, the people would rejoice, and it would fill their hearts with gratitude. Why? Because it is in accordance with common sense, and relieves them of heavy burdens. Another friend of mine from Montgomery, a very brilliant man, says the people would not be grateful at all, that they would rather pay the tax than to be relieved of burdens. They remind me—both of them are wrong in their positions—but they remind me of two men riding down Pennsylvania Avenue. Both of them were a little cross-eyed, each of them was mounted on a bicycle, they were riding at full speed, as the young men say, “scorching.” Each saw the other coming, each was anxious to avoid the collision, but their care did not prevent their clashing together. They came together, one fell to the right and the other fell to the left, and one of them got up and brushing his knees said: “Why in the devil don’t you look where you are going?” And the other said, rubbing his shoulder: “Why in hell didn’t you go where you were looking?” And so of my friends from Montgomery, both of them are cross-eyed on this question, and they are going wrong. If you have high taxes you may have a splendid government, but a splendid government in a Republic, is a golden sorrow, but by having light burdens, low taxes, you will have a prosperous and a contented people, and such people make the glory of a country.

MR. WHITE (Jefferson)—I do not expect to take the wide range on the pending measure which has been taken by my friends on both sides of this question, nor do I expect to go into the statistics, for I have long since learned that if you will give a man paper and pencil, he can figure out a deficit or a surplus according to his own inclination. But I do want to ask this Convention to be consistent. A few days ago I was urging, the best I knew how, a limitation on or a repeal of the tag tax. All of my friends admitted one of two things, they all said the tax was unjust and unequal, but some said we could not spare the revenue, and therefore we must vote against it. Well, if we could not spare

the revenue to relieve the farmer of that unjust and unequal taxation, how can we spare the revenues which will amount to \$266,000 of a just and equal taxation. The better argument, however, was, and there was great force in it, that the legislature would attend to that matter, and that it was something peculiarly within the sphere of the legislature. I say there was great force in that argument. We remitted that to the legislature. Now, can we not afford to leave this question of limitation also to the legislature? When we undertake to say to the legislature that you shall not exceed 65 cents on the \$100, or 6 1-2 mills, that we are afraid for you to have the power to levy 7 1-2 mills, have we not voted a want of confidence in the people of Alabama? The people of Alabama can only act through their Legislature, and the Legislature has never yet failed to respond to any material extent to a just demand for a reduction of taxation where that taxation was direct. It is only where taxes are indirect, and the people don't realize the burden, that legislators are disinclined to reduce taxes. I am going to advise you, gentlemen of the Convention, to adopt a strange course. I am going to ask you this afternoon to differ with me. I am going to take one position, and ask you to take another. If I should look narrowly upon the question, I would be in favor of the 65 cent rate, because the county from which I hail pours into the treasury every year \$40,000 of this one mill tax. By leaving it at 65 cents, instead of 75 cents, the people of Jefferson county would retain annually in their pockets \$40,000, or they would have \$40,000 to apply to their local schools. But I shall take a wider and a broader view than that. The county of Jefferson, in her political destiny, is wrapped up with the destiny of sixty-five other counties in Alabama. The sixty-five other counties in Alabama must make the laws and the appropriations, and especially declare the policies under which Jefferson county and her people must live. I think that I ought not to look narrowly, and alone to the interests of my immediate constituency, but I should take in the whole field, look at the whole State as one great political unit in which the future destiny of every other county is locked with mine. Did it ever occur to you, and I want you men now from the poorer counties, the white counties in Alabama, to heed what I say, because the day will come when you will rue it if you do not heed it. I will take every county south of Montgomery save Mobile. Jefferson county pays as much taxes into the State treasury as all of them combined. I can take all the counties east of Jefferson and north of Elmore, saving Calhoun. Jefferson county pays as much taxes as all of these combined. I can take all of the counties north of Marengo and west of Jefferson to the Tennessee line, and Jefferson pays as much as all of them. But you say, Jefferson has the population as well, and she will receive back her share of this money. Let me show you: The population of the counties south of Montgomery of which I have just spoken, excluding Mobile, has 380,000



population. Jefferson county has 140,000 population. Then Jefferson pays into the treasury as much as all of them and receives back only in the proportion that her 140,000 bears to the population of 380,000. Take the tier of counties north of Elmore and east of Jefferson to the Tennessee line. They have a population of 344,000 people, and they pay no more taxes than Jefferson. Take the tier of counties west of Jefferson and north of Marengo, they have a population of 365,000, Jefferson has 140,000, and the disparity is even greater than that when you come to estimating upon the number of children, because the number of educated in Jefferson is less in proportion to the whole population than any other county in the State, because of the fact that there are thousands of men in Jefferson who have no families. Remember that in Jefferson county we pay taxes upon millions and millions of dollars that do not represent any population at all in Alabama, yet in justice and right that property should contribute to the upbuilding and the uplifting of the entire population of the State. Can you men who come from the poor counties, from the white counties of Alabama, refuse to take from the great county of Jefferson this boon, or rather can you refuse to allow Jefferson to make her contribution to the common good? I know, and you know, that when the times comes the common schools of Alabama will receive the blow that this reduction will give. When riots are running rampant in the land cash must be advanced to pay for their suppression, when epidemics sweep over the country, when we are scouraged with yellow fever and smallpox, cash must be advanced to meet the bills. You dare not vote down the old soldier tax, because there is a sentiment behind it that will never allow you to do it, but this blow that you do today you are dealing at the pale-faced children of Alabama that live in the hills.

MR. LONG (Walker)—Bare-footed?

MR. WHITE—Yes, bare-footed, bare-headed, barely receiving the necessities of life and without any of the means of education. Remember again, that the earning power of a people depends upon their education. Consult the statistics of this country and you will see in Massachusetts that the people of that State earn more money per capita than any other State in the Union, because of her educational advantages. You men from the poorer counties, the sons of whom must gather around the great industrial plants in my section, remember if your children are not educated, they must be the hewers of wood and drawers of water. If you want them to participate in that great development, and receive their share of the wage that will be paid, educate them in order that they may be enabled to take the best positions that this industrial development affords. Think over this, you men who represent a white constituency, whose lands are too poor, and whose property is too scarce, to provide them by local taxation with public schools. Remember that your hopes, and the hopes

of your children, are linked to the great industrial section, and that you must keep the chain that binds you to us together, when you break it you fall back and we leap forward, you will be left far behind. I ask you today, for one time in your lives, to be selfish. I think it is better for the whole State, and even better for my county, to pay an undue proportion of this money, than to allow the people of Alabama to continue in their illiteracy. I tell you, gentlemen of the Convention, that illiteracy has cast its shadow upon the industrial, political and the social life of Alabama long enough. I warn you, now, against what you are doing.

MR. WILLIAMS (Marengo) — I think the Convention is ready for a vote on this question. It has been discussed fully enough, and I therefore call for the previous question on the Section as reported by the Committee and on the amendment thereto.

THE PRESIDENT — The gentleman from Marengo moves the previous question on the amendment to the Section reported by the Committee.

MR. WHITE—In order that the amendment offered by the gentleman from Talladega (Mr. Graham) which was laid on the table may be recalled, I move to table the amendment offered by the gentleman from Hale.

THE PRESIDENT — The gentleman from Jefferson moves that the amendment of the gentleman from Hale be laid upon the table?

A vote being taken the amendment was tabled.

MR. WILLIAMS (Marengo) — I have moved the previous question on the Section as reported by the Committee.

MR. WHITE—In order that we may recall from the table the amendment offered by the gentleman from Talladega (Mr. Graham) I move to lay the Section as reported by the Committee on the table.

MR. BROWNE—And on that I call for the ayes and noes.

MR. WHITE—And I join in the call.

MR. BROWNE—All right, we will be with you.

The call for the ayes and noes was sustained by the rising of the requisite number and the result of the roll call on the motion to table the Section as reported by the Committee was as follows:

#### AYES

Ashcraft,  
Banks,  
Barefield,  
Beddow,

Cobb,  
Davis, of Etowah,  
Dent,  
Eley,

Eyster,  
Ferguson,  
Graham, of Montgomery,  
Greer, of Calhoun,

Henderson,	Norwood,	Smith, Mac. A.,
Jenkins,	O'Neal (Lauderdale),	Waddell,
Jones, of Montgomery,	Opp,	Watts,
Jones, of Bibb,	Reynolds (Chilton),	Weakley,
Locklin,	Rogers (Lowndes),	White,
Lowe (Jefferson),	Sanders,	Williams (Barbour),
Murphree,	Smith (Mobile),	
TOTAL—32.		

NOES

Messrs. President,	Heflin, of Chambers,	O'Rear,
Bethune,	Heflin, of Randolph,	Parker (Elmore),
Brooks,	Hinson,	Pettus,
Browne,	Hodges,	Phillips,
Burnett,	Howze,	Pillans,
Burns,	Inge,	Pitts,
Byars,	Jackson,	Reese,
Carnathon,	Jones, of Wilcox,	Robinson,
Cofer,	Kirk,	Rogers (Sumter),
Coleman, of Walker,	Knight,	Sanford,
Cunningham,	Kyle,	Sentell,
Davis, of DeKalb,	Leigh,	Sloan,
Espy,	Long (Butler),	Sorrell,
Fletcher,	Long (Walker),	Spears,
Foshee,	Macdonald,	Spragins,
Foster,	Martin,	Stewart,
Gilmore,	Maxwell,	Studdard,
Glover,	Merrill,	Taylor,
Grant,	Moody,	Weatherly,
Grayson,	Mulkey,	Whiteside,
Greer, of Perry,	NeSmith,	Williams (Marengo),
Harrison,	Norman,	Winn.
TOTAL—66.		

ABSENT OR NOT VOTING

Altman,	deGraffenreid,	McMillan (Baldwin),
Almon,	Duke,	McMillan (Wilcox),
Bartlett,	Fitts,	Malone,
Beavers,	Freeman,	Miller (Marengo),
Blackwell,	Graham, of Talladega,	Miller (Wilcox),
Boone,	Haley,	Morrisette,
Bulger,	Handley,	Oates,
Cardon,	Hood,	O'Neill (Jefferson),
Carmichael, of Colbert,	Howell,	Palmer,
Carmichael, of Coffee,	Jones, of Hale,	Parker (Cullman),
Case,	King,	Pearce,
Chapman,	Kirkland,	Porter,
Coleman, of Greene,	Ledbetter,	Proctor,
Cornwall,	Lomax,	Renfro,
Craig,	Lowe (Lawrence),	Reynolds (Henry),

Samford,	Sollie.	Willett.
Searcy,	Thompson,	Williams (Elmore).
Selheimer,	Vaughan,	Wilson (Clarke),
Smith, Morgan M.,	Walker,	Wilson (Washington).

So the house refused to table the section as reported.

During the roll call:—

MR. ALMON—I am paired with the gentleman from Jefferson, Mr. Cornwall; he would vote aye and I would vote no.

MR. BLACKWELL—I am paired with the gentleman from Jackson, Mr. Proctor; he would vote no and I would vote aye.

MR. CARDON—I am paired with the gentleman from Talladega, Mr. Graham; he would vote aye and I would vote no.

MR. CARMICHAEL (Colbert)—I am paired with Mr. Haley; he would vote no and I would vote aye.

MR. CHAPMAN—During the session of the convention on last Saturday the delegate from Hale (Mr. deGraffenreid) approached me and asked me to pair with him. I told him I had some doubt about the propriety of pairing, as there might be some collateral question. After some conversation he left, without any understanding on my part that there was a pair. I am informed by delegates that Mr. deGraffenreid considered I was paired with him. I was subsequently informed by another delegate that Mr. deGraffenreid was paired with another gentleman. Although I did not understand that I had made a pair, I would not in any way like to be put in the position of violating a pair with Mr. deGraffenreid, and, for that reason, I ask that my name be passed, and unless there is a pair announced for him during the roll call, I will allow this pair to stand. If he were here, he would vote aye and I would vote no, but I will not have it so recorded unless another pair is announced for him.

MR. BROWNE—I had forgotten when I spoke to the gentleman who it was that told me of a pair that Mr. deGraffenreid had. Mr. Burns of Dallas told me that Mr. Craig of Dallas had stated to him that he was paired with Mr. deGraffenreid. I do not know that Mr. deGraffenreid was standing closer than four or five feet of us at the time. When the gentleman spoke to me about it this morning, I could not recollect who it was, but the gentleman from Dallas refreshed my recollection.

MR. LONG (Walker)—I heard the pair made between Mr. deGraffenreid and Mr. Craig.

MR. CHAPMAN—If that is the case, I will vote no. The vote was recorded.

MR. ELEY—I am paired with Mr. Proctor of Jackson.

MR. O'NEAL—There has been a pair announced for him.

Mr. Eley then voted.

MR. JACKSON—I desire to know if the amendment fixing the amount at seventy cents has been tabled?

THE PRESIDENT—It has.

MR. JACKSON—Then I vote no.

MR. LEDBETTER—I am paired with the gentleman from Lee; he would vote no and I would vote aye.

MR. LOMAX—I am paired with the delegate from Tuscaloosa, Mr. Searcy; if he were present he would vote no and I would vote aye.

MR. LOWE (Lawrence)—I am paired with Mr. Selheimer; if he were present he would vote aye and I would vote no.

MR. MILLER (Marengo)—I am paired with Mr. McMillan of Wilcox; he would vote aye and I would vote no.

MR. WILLER (Wilcox)—I am paired with Mr. Wilson of Washington; I would vote no and he would vote aye.

MR. OATES—I am paired with Mr. Morrisette; he would vote no and I would vote aye.

MR. PALMER—I am paired with Mr. Wilson of Clarke; if he were here he would vote aye and I would vote no.

MR. SOLLIE—I am paired with my law partner, Mr. Kirkland of Dale; he would vote aye and I would vote no.

MR. CHAPMAN—I have some doubt as to the propriety of voting. I would not like to be put in the position of even allowing an intimation that I had broken a pair.

THE PRESIDENT—The gentleman can recall his vote.

MR. CHAPMAN—I would prefer to recall it rather than be put in the position of violating a pair.

MR. WILLIAMS (Marengo)—I move the adoption of the section as reported by the committee, and on that I call for the previous question.

A vote being taken, the main question was ordered.

MR. BROWNE — I desire to congratulate the gentleman from Jefferson (Mr. White) upon his fine display of parliamentary ability. For two days, the Committee on Taxation has graciously yielded in order that every member who was opposed to this reduction of taxation should be heard. The gentleman from Jefferson secured the floor, and, in order to cut off the right of the

Committee on Taxation to be heard from, after the previous question has been called, moves to lay the amendment and section upon the table.

MR. WHITE—I wish to say to the gentleman from Talladega that I had no such desire. My purpose was simply to get the other amendment from the table.

MR. BROWNE — Then the gentleman pleads ignorance of the parliamentary result.

MR. WHITE—If you had made known that you wanted to debate it, I would have withdrawn it instantly.

MR. BROWNE—I think, Mr. President, the gentleman was very wise in the course he pursued, which certainly, whether he intended it or not, would have had the effect of cutting off any reply to his remarks.

Only a few days ago the gentleman stood upon this floor the champion of the farmers of the State of Alabama, pleading long and loud in order that the poor farmer might be saved the sum of \$80,000, although by making that saving to the farmer, would destroy all the agricultural schools within the State of Alabama. Today we hear him speaking long and loud against relief to his own people in his own county, saying that this reduction would benefit them, but opposing it.

Mr. President, this tax reduction will be for the benefit not only of the manufacturing district of Jefferson County, but of the farmers of the whole State, and I do not see the consistency in the position of the gentleman from Jefferson who urged upon this floor the repeal of the fertilizer tax in order that he might save the poor farmers a few dollars, and, today, he resists a reduction that would give them an equal amount. He reminds me of the little boy who went fishing. He went out and bated him a cat pole, then went with some angle worms and threw his line in, and, bye and bye, got a tug and pulled out a whopping big trout, when, with a look of disappointment, he threw it back in the stream and said, "I am fishing for cat; I am not fishing for trout."

It would be impossible in an hour or two hours, to undertake to reply to the false argument that has been made upon this floor against this tax reduction, and the false estimates of figures. Let it be sufficient to say that estimates have been used upon the other side that are confessedly false. They are predicated upon the estimates made by the Auditor, upon the thirtieth day of last year, which the Auditor now admits to be wrong and erroneous by hundreds of thousands of dollars.

In reply to the farmer from Wilcox, who recollects when he sold cotton at 3 1-2 cents a pound, and recollects that the effect of that low price was to reduce taxable values, I desire to say

that the year of the lowest price of cotton within the memory of man was 1898, when it sold for 3 1-2 cents a pound. The gentleman said, as a matter of course, the taxable values would decrease in the next year. The Auditor's report shows that in 1899 taxable values increased three million dollars. One gentleman upon the floor the other day said the suffrage ordinance, if adopted, would decrease the poll tax \$250,000. Well, all I have to say in answer to that is we only collect \$150,000 of poll taxes, and that the colored people only pay about \$35,000 of that. It is a well known fact, Mr. President, that a great many of the boys who do the voting, do not pay any poll tax. Young men, twenty-two to twenty-five years old, who are clerking in stores, or engaged in other occupations, but who have no property that necessitates their going before the tax assessor, do not go and hunt him up to give in their poll tax, but now it means disfranchisement if they do not assess their poll tax and pay it, and I contend that we will get a greater yield from that source for schools in the future than in the past.

Just one minute on the figures again. Mr. President and gentlemen of the Convention, I hold in my hands the figures as made by Judge Cook, and upon which this committee predicted the recommendation to reduce taxation. No one has assailed these figures. It is admitted that they are correct, but they have gone to guessing against the actual figures. The gentleman from Montgomery, Mr. Watts, read a paper that somebody said had come from the Auditor's office in which he showed that under certain contingencies or possibilities we would not have collected but \$2,540,000 this year. As a matter of fact they had collected up to the eighteenth day of June \$2,612,000. The collections will be from that date to September thirtieth, if no larger than last year, \$190,000. Our estimate was that they would be at least \$10,000 more, making the total this year \$2,712,000, and all expenditures will be \$2,754,000. Deduct and we have a difference in round figures \$59,000. Add that to the actual cash balance in the treasury October 1, 1901, of \$620,000, and you have \$679,000 in the treasury, upon the first day of October against which are chargeable a like amount of liabilities, but they are payable in October, November and December. Now I have another estimate—

MR. ASHCRAFT—Will the gentleman permit me to ask him a question?

MR. BROWNE — No sir, I have not the time. The total amount paid into the treasury during last October, November, December and January was \$1,276,000. The total payments during October, November, December and January last were \$1,247,000, showing that the receipts during those months were about \$30,000 in excess of the disbursements. Did they decrease the \$620,000 cash balance? By no means, but in that time they added

about \$30,000 more to it. Again, in 1895, upon the first day of October, there was a cash balance in the treasury of only \$11,000. On the first day of October 1900, there was in the treasury \$620,000. A gain of \$609,000.

Again, on the first day of July, two years ago, there was in the treasury, when the July interest upon the bonds had been paid, only \$333,000. Today there is \$902,000 in the treasury and the July interest long since paid. We are not gaining? We cannot comply with our promises to the people to reduce taxes, if practicable, when we are gaining in July cash in treasury \$330,000 a year upon an average?

No one has shown anything to controvert the figures or the estimates made by this committee. I say to you, Mr. President and gentlemen on this floor, if this report had been made by some other committee, and that statement had been made, and I had had doubts upon the subject, and had heard the able men who have opposed this measure make the kind of speeches they have made, and fail to pick any flaw in these figures, that doubt would have been entirely removed.

MR. WADDELL—May I ask the gentleman a question.

MR. BROWNE—No sir. You have not been able to show anything. Your fears are at the bottom of the whole thing. You fear you will not be able to build a magnificent Capitol, a Governor's mansion and buy these shacks south of here. You fear your school teachers. You are friends of the schools, and are afraid you will not be able to pile up a large surplus and appropriate it to the public schools from the general fund of Alabama, when it is a well known fact to every one, or ought to be, that for every dollar you take from the people you swipe about fifteen cents off before it goes back to them, and then force them to divide it with a non tax paying race. Tell me that we must relegate this matter to the Legislature? Then why did the Democratic party put it in its platform? I for one do not agree with those newspapers that say that was done only for the purpose of winning votes. No man can pledge me for that purpose. If I go upon a platform, and that platform has pledged those who stand upon it to a course of action, I will follow that course of action or get down off of the platform. The charge has been made by able gentlemen, the charge has been made by my personal friends, and I know that they do not mean it, that we were in the attitude of members of the Legislature, who wanted to cut down the taxes and go back home and say "Ain't I a statesman, I saved you some money." The gentleman who said it did not mean it. We are simply undertaking to do our duty, under the instructions of this body, and the people, who sent us here.

Now, Mr. President, I desire simply to say this in conclusion. If any man upon this floor who is opposed to the report of



the Committee could have found one figure wrong in this statement, could have cast one doubt upon it, I would have been the first man to say "for Heaven's sake don't let me, or my Committee, be the instrument by which the State of Alabama would become a defaulter." As I knew that gentleman after gentleman was going to get up and attack these figures, I spent night after night, and day after day, going over them, all of them, the ones made by the Auditor's office, and the ones made by me, and I never found but one mistake and that was a mistake of \$20 made in the Auditor's office.

Mr. President, I have nothing more to say.

**THE PRESIDENT**—The motion is to adopt the motion as reported by the Committee.

The motion was carried the Section adopted.

Section 5 was read as follows:

Sec. 5. No county in this State shall be authorized to levy a larger rate of taxation in any one year, on the value of the taxable property therein, than 1-2 to 1 per centum. Provided, that to pay debts existing at the ratification of the Constitution of 1875, an additional rate of 1-4 of 1 per centum may be levied and collected, which shall be exclusively appropriated to the payment of such debts or the interest thereon, provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction and maintenance of the necessary public buildings, or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges or roads, any county may levy and collect such special taxes not to exceed a rate of 1-4 to 1 per centum as may be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes, for which the same were so levied and collected; provided further, that for the maintenance of public schools any county may levy and collect such special tax as may be authorized by law: provided such special tax, the time it is to continue and the purposes thereof shall have been first submitted to a vote of the property tax payers who are qualified electors in said county, and voted for by a majority thereof in numbers, and in value of taxable property, voting at such election; provided that the rate of such special tax for maintenance of public schools shall not increase the rate of taxation in any one year to more than \$1.25 on every \$100.00 worth of taxable property, for all State and county purposes, excluding any special tax for the erection, construction and maintenance of necessary public buildings, bridges and roads; and provided further, that such special tax for schools shall be apportioned equitably and paid to the public schools of such county, by the Court of County Commissioners or Board of Revenue thereof.

MR. CUNNINGHAM (Jefferson) — I desire to offer an amendment to that Section.

The amendment was read as follows:

Amend Section 5 by striking out in the fifteenth line the phrase, "property tax payers who are" and in the sixteenth and seventeenth lines the following words "in numbers and in value of taxable property."

MR. CUNNINGHAM (Jefferson) — When the Committee examined this report, there were two or three of us, possibly more, who did not approve of so much of the Committee's report as gave to property the right to vote in an election. We did not at the time, however, desire to embarrass the purposes of the Committee, and the objects that it had in view, by burdening it specially with a minority report, but we reserved the right, on the floor of the Convention, to offer the amendment that has been read at the Secretary's desk, and to which I desire briefly to call the attention of the Convention.

It will leave the Section to read like this, beginning in the twelfth line:

Provided further, that for the maintenance of public schools any county may levy and collect such special tax as may be authorized by law, provided such special tax, the time it is to continue and the purposes thereof, shall have been first submitted to a vote of the qualified electors in said county and voted for by a majority thereof voting at such election, provided that the rate of such special tax for maintenance of public schools shall not increase the rate of taxation in any one year to more—"

In other words, it simply leaves it to the qualified electors of the county.

Now I have two purposes in offering this amendment. In the first place I will acknowledge the equity of the proposition that the property which pays the tax has an equitable right to vote upon the question, but I am fearful of the principle, Mr. President, of admitting the dollar to the right to vote. I believe it would be an innovation upon the established principles of the Party to which I have the honor to belong, and the fundamental principles of a Republican form of government. For that reason I am opposed to it as a matter of principle. In the second place, Mr. President, were it to be adopted, I cannot see very well how we could determine the fact as to how the property voted at these elections. I would either require a viva voce vote, or the ballots would have to be numbered. In either case it would result necessarily in a material change in the election laws of the State. I am heartily in favor of this tax. I am heartily in favor of local taxation for the public schools. I believe it to be to the best in-

terest of the State of Alabama, and this was one of my reasons for supporting the Section which has just been adopted, but I believe, Mr. President, it would be too serious an innovation upon the established principles, usages and customs of this Republic and of the State of Alabama to admit the dollar to vote in competition with man. For that reason I offer the amendment, and I am firm in the conviction and belief, that the property interests in the State can, in this, as in other particulars, rely upon the electorate, which we propose to purge, and to make pure, honorable, safe, conservative and patriotic, by suffrage regulations in this Convention. For these reasons, Mr. President, I hope the amendment will be adopted.

MR. BROWNE — If the conditions all over the State of Alabama were the same as they are in my county, I would cheerfully agree to the amendment offered by the gentleman from Jefferson, but we must not forget that in making this Constitution we are making one for the whole State, for every county in the State, and that conditions are materially different in different counties.

The provision for school taxation incorporated in this Section is identical with the one incorporated in the Constitution of the State of Louisiana. It requires in that State a majority of the qualified electors who are tax payers in numbers, and in value of property, voting at an election. The provisions are exactly similar.

When this report was made it was said by some of the public press of Alabama that it was a most ridiculously absurd proposition. That in not a single county in Alabama would property vote this tax upon itself for the education of children. It may be that that sentiment found a lodgment with certain members of this body. But I wrote to the Superintendent of Education of Louisiana, and I desire to read his letter upon this subject. I only asked him how the law worked, and if it was favored by the people; nothing else did I ask him. and he said:

“Our State has local taxation for the schools, voted for by the people who are a majority in number and value of the property. Our school districts are either entire counties, cities, or small districts. Second, as a rule the voters do favor this special tax. Third, I regard this special local tax as beneficial in its results.”

Now in Texas they have a special school tax that can only be levied after having been voted for by a two-thirds majority of the qualified electors who are property tax payers. That provision is not subject to the objection urged by the gentleman from Jefferson. The vote of the man who is worth \$10,000 does not count for any more in Texas than the vote of the man who is only

worth \$100, but by requiring a two-thirds majority of all of the property tax payers you will readily see that, in the great majority of instances, before that tax can be imposed, a majority in value of all the property in the county must favor it. I would not object to so amending this law as to provide that it should be left to a vote of the property tax payers, who are qualified electors, and voted for by a two-thirds majority thereof. It seems to me such a provision would meet all of the objections urged by the gentleman from Jefferson, and still not be subject to the objection which would be raised by certain portions of the State of Alabama to the amendment proposed by him. There are counties possibly in the State of Alabama, where to allow a bare majority of the qualified electors to tax the property in that county for school purposes would almost amount to confiscation of property. That condition does not exist in North Alabama, but it does exist in parts of South Alabama and in order to make this law acceptable to all portions of the State of Alabama, I believe that it will be necessary to require it to be submitted to a vote of the qualified electors who are property holders.

MR. LOWE (Jefferson)—May I ask the gentleman a question?

MR. BROWNE—Certainly.

MR. LOWE (Jefferson)—Does the gentleman know of any time in the history of Alabama, or of any Southern State, when property has been allowed to vote or when a man has been allowed to vote in proportion to his holdings of property?

MR. BROWNE—Had the gentleman been listening he would have heard my remarks a few minutes ago, when I said in Louisiana they have a provision that before this tax is levied—

MR. LOWE (Jefferson)—I heard the gentleman's remarks as to the Louisiana special tax, but I ask the gentleman if he has ever known where a man has been allowed to number his votes according to the amount of property he owns, in any Southern State?

MR. BROWNE—In Louisiana they do it, when it is voting a tax upon the property, a voluntary tax, or a voluntary contribution, through governmental agencies, for schools.

MR. LOWE (Jefferson)—May I ask the gentleman another question?

MR. BROWNE—Yes.

MR. LOWE (Jefferson)—In reference to this section, I understand you desire to make an explanation of this section.

MR. BROWNE—That is what I was undertaking to do.

**MR. LOWE (Jefferson)** — In connection with the amendment I would like to ask another question. This section, as I understand it, provides that before a special school tax can be levied in a county, it must be submitted to all the qualified voters of the County, does it not?

**MR. BROWNE**—Who are the property tax payers.

**MR. LOWE**—Now, for instance, in Jefferson County, before the tax could be levied for a school fund for Jefferson County, the voters in the city of Birmingham and Bessemer, in Pratt City, in Woodlawn, and in the other special school districts there, would be required to vote upon that question, would they not?

**MR. BROWNE**—I should think so, yes.

**MR. LOWE (Jefferson)**—I ask the gentleman another question. Is that all the hope you hold out to the country people for a special school fund under this special tax? If there is anything else in it, I would like to have the suggestion?

**MR. BROWNE**—The gentleman must have been reading the editorials upon this Tax Committee in The Age-Herald for the last two weeks—

**MR. LOWE (Jefferson)** — I am reading the report of the Committee now, to see if there is anything in it that I have not read.

**MR. BROWNE**—In this provision we are still holding steadfastly to the pledges we have made to the people that we would not increase the taxes. This provision is to the effect that the county can vote any tax that may be authorized by law, provided it shall not go beyond the present constitutional limitation. Now as we have lowered the tax rate from seventy-five to sixty-five, the county can only take one mill, or ten cents on the hundred dollars. Should the Legislature in the future, as I confidently think they will, see they can get along with less than sixty-five, and take only sixty, the county can levy fifteen for school purposes, which would be in addition to what they now receive.

In answer to the gentleman's suggestion, if this is all we can do for these little children, I want to say to him, and to other gentlemen who have paraded the bare-footed children before this body, that they are not the only persons whose hearts are touched by the glad songs the little children sing. It is a slander upon the fair name of Alabama to say that this State is doing less for the school children than any other State. We have before us frequently discussions in the newspapers, and they say look what Georgia is doing for her school children, and then look what a pitiful little sum Alabama gives? I tell you Alabama gives more to the schools than does Georgia in proportion to the taxable value of all the property. I have corresponded with every Super-

intendent of Education in the United States, and with very rare exceptions Alabama is doing as much for the schools, according to her taxable property, as any other State in the Union. We well know that under the present system that has been defended upon this floor, and has been defended in the lobby, that we are engaged in the farcical performance of taking money from the people, taking out a big swipe, and sending back from eighty to eighty-five per cent of it, and forcing them to divide it with a non-tax paying race, when they do not use it for education. There is no use to mince words. There are counties in the State of Alabama that get large sums of money from the general fund, that do not spend it for schools. When they have deducted for the colored children, there is enough to divide around among the white people, and they do divide it. They do not pay it to the schools, but those white people send their children off to schools. Now that has been condemned in some portions of the State but that is all wrong. That is not deserving of condemnation. It is the system that is at fault. If you take from Lowndes county thousands upon thousands of dollars, and then give it back to her for school purposes, and she does not need it, there is no reason why we ought to keep it and not return it. We pay that money out per capita, because it is paid by them. Under the present system, the State of Alabama ought never to give one other dollar from her general fund to the schools, but they should leave it in the counties to be appropriated equitably among the schools in their own counties.

The hour of five having arrived, the Convention adjourned until tomorrow morning.

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## THIRTY-FIFTH DAY

MONTGOMERY, ALA.,

Tuesday, July 2, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. Patterson as follows:

Dear Lord, in Thy good providence Thou hast brought us through another night, and Thou hast set before us with its privileges and responsibilities another day of life, and we would not begin the work of this day without asking Thy blessing and praying for Thy guidance and Thy direction. We realize that in all things we are dependent upon Thee and we praise Thee for Thy kindness and Thy thoughtfulness toward us, and our Father we beseech Thee Thou wouldst permit us to address ourselves to all tasks Thou hast laid upon us, with an eye single to Thy glory and honor, with a full determination, as Thou dost give us grace

and wisdom, to discharge every obligation in a way acceptable in Thy sight. Be with these Thy servants, strengthen them, guide them, support and uphold them, and at last when Thou hast served Thy will with us all here on earth, receive us on High, for the Redeemer's sake, Amen.

Upon the call of the roll, 121 delegates responded to their names.

Leaves of absence were granted to Mr. Proctor for today; Mr. Carmichael (Coffee) for yesterday; Mr. Thompson (Bibb) for Saturday, Monday and Tuesday; Mr. Renfro for Monday and today.

MR. COBB—I have sent to the reading clerk a resolution which I desire to put upon its immediate passage, and to that end I ask a suspension of the rules, after the reading of the resolution.

Resolution No. 215 by Mr. Cobb:

Whereas, one of our colleagues, realizing the truth of the sentiment that it is not well for man to live alone, has taken to himself a life companion, and

Whereas, we recognize in this course of our brother delegate the exhibition of that wisdom and prudence which have always characterized him, and

Whereas, this Convention desires to put the stamp of approval upon conduct so eminently conducive to the happiness and usefulness of men, and

Whereas, the family relation is the chief corner stone of our political institutions,

Therefore be it resolved, That we the members of this Convention extend to Hon. E. D. Willett, and his accomplished wife, our sincere felicitations; and express to them our earnest wish that the journey on which they have recently entered may be thornless and protracted, leading them at the last to that perfect bliss which comes to those who make secure entrance into the beautiful land.

Resolved, That the clerk of this Convention deliver to Mr. and Mrs. Willett a certified copy of these resolutions (Applause.)

MR. COBB—I move a suspension of the rules.

Upon a vote being taken the rules were suspended.

MR. COBB—Mr. President, the declaration contained in the resolutions just read that "it is not well for man to live alone," is as true and forceful as it is trite. And so of the other sentiment that our political institutions rest upon the family relation as their chief corner stone. As member of this body, we are the repre-

sentatives of intelligent and upright constituencies, who love virtue and faithfulness to duty; and are ever ready to extend the meed of commendation to every word and act which will secure the one and promote the other. And they will pardon us, I am sure, if we turn aside from the work we have to do, to give the plaudit of well done to our worthy confrere, and to extend to him and his accomplished bride the congratulations and well wishes of the people of Alabama. That we may give emphasis to their approval and ours, I move the adoption of the resolutions by a rising vote.

And by a rising vote, the resolutions were unanimously adopted.

The report of the Committee on the Journal was read, stating that the journal for the thirty-fourth day of the Convention had been examined and found to be correct, and the same was adopted.

MR. ROBINSON—I now move to take from the table the resolution reported by the Committee on Rules to limit debate. I think it is high time that that resolution, or one of similar import should be adopted. That resolution was reported by the Committee, and it was laid upon the table, to be taken up at any time at the pleasure of the Convention. Therefore it is a privileged question. If the convention does not desire to limit the debate to five minutes, then they can amend the resolution, but it does seem to me if we are ever to get through with the making of a constitution, there must be some limit to debate in this body. Therefore I move to take the resolution from the table and put it upon its passage.

MR. PETTUS—I would like to ask the gentleman a question. Is not there a limit on debate now, under the rules of the Convention?

MR. ROBERTSON—There don't seem to be.

THE PRESIDENT—The gentleman from Chambers moves to take from the table the report of the Committee on Rules.

Upon a vote being taken, a division was called for, and by a vote of seventy-one ayes and twenty-four noes the motion was carried.

MR. ROBINSON—I now move the adoption of the resolution.

MR. O'NEAL (Lauderdale)—I move an amendment to the resolution.

A reading of the resolution reported by the Committee was called for.



MR. SOLLIE—I have an amendment, Mr. President.

MR. BULGER—I ask for a reading of the resolution. I do not remember the original resolution.

THE PRESIDENT—The Secretary will read the resolution as reported by the Committee on Rules, and will read the amendment offered by the gentleman from Dale.

The resolution was read as follows:

Resolution No. 166, by Mr. Harrison: Reported favorably by the Rules Committee, with an amendment:

Original resolution:

Resolved That all speeches on amendments to ordinances reported by the standing committees be limited to five minutes each.

Amendment by the committee:

Amend Resolution No. 166, by Mr. Harrison of Lee, so as to read as follows:

Resolved, That all speeches on amendments to ordinances reported by the standing committees be limited to five minutes each, whether made before or after the ordering of the previous question.

Amendment by Mr. Sollie:

Amend by striking out the word "five" and substituting therefor the word "ten," so that it will read ten minutes.

MR. O'NEAL (Lauderdale)—I desire to offer an amendment to the amendment.

THE PRESIDENT—The committee reports the resolution with an amendment, and the proposition of the gentleman from Dale would be an amendment to the amendment.

MR. O'NEAL (Lauderdale)—Would a substitute be in order?

THE PRESIDENT—An additional amendment in the opinion of the Chair would not be in order at this time.

MR. O'NEAL (Lauderdale)—I think the gentleman will accept my amendment.

MR. SOLLIE—Let me hear it.

MR. O'NEAL (Lauderdale)—Resolved, that the rule shall not apply to debate on the report of the Committee on Suffrage, or to the chairman of committees.

MR. SOLLIE—Yes, I accept that as a substitute.

**THE PRESIDENT**—The gentleman from Dale asks unanimous consent to accept the amendment proposed by the gentleman from Lauderdale. Is there objection?

**MR. ROBINSON**—I object.

**MR. SOLLIE** — Among my immediate colleagues, coming up from the wire grass, I brought to the Convention with me something of a reputation for being long winded in speech making, and the amendment extending the time from five to ten minutes coming from me will at least, be consistent, I believe, however, that I might say, by way of parenthesis, that I have been out-Heroded in the matter of speech making, and that whatever of pride I might have felt in my previous reputation along that line, the time has come when I must surrender both the reputation and the proud feeling following it. Yet, it occurs to me, Mr. President, that a debate to be limited to five minutes, is to great a limitation for the question that are constantly coming before this Convention. Many of these questions have so many bearings, and such varied aspects; the dangers in their passage, or the reasons for their passage, are so numerous, and touch upon so many points, that in my judgment, gentlemen who are capable of speaking to resolutions and to ordinances, cannot in five minutes present the arguments which they would like to present, and which, if it is well to argue them at all, this Convention ought to hear. But there will rarely come before the Convention any question which a man of moderately swift speaking capacity and ordinary powers of condensation, may not speak down within the ten minutes; and it occurs to me that the ten minute limit would be a more reasonable limitation upon the right to speak than the five minute limitation. There are two extremes in all matters, and it does appear that we have been heading strongly towards the extreme of great length in speech making in This Convention. I think it is a fault which none of the orators who have spoken here can say belongs to the balance, and not to himself. It seems to be general. Inasmuch as it is general, we all may stop and take counsel to ourselves, and see if we, each one including himself in the number, are not taking too much time in debate. Yet, Mr. President, I for one will not consent, that the right to speak, the right to throw light upon the various questions which will be brought before the Convention, shall be cut off and limited to five minutes. We have already, from the ordinances which have been introduced, seen what a disposition there is among members of the Convention to introduce and bring in through committees, reports making radical changes in the fundamental law of Alabama; and when that is shown to be the case—when it seems that we are so anxious to make grave and radical departures from the Constitution as it now stands, although the matter in which we depart from it is not one where the old Constitution has proven insufficient—I say when that disposition shows up in

the Convention that it is not well that we should cut off the right to debate and show the wrong in these proposed departures. Ten minutes is not more than sufficient time for any gentleman of moderate ability to present an argument upon these great questions, which are being brought before us. I hope that the five minute limit will not be put upon the Convention. I insist respectfully that no gentleman who is able to speak, not even those who are not able to speak, can make an argument upon a grave constitutional question inside of five minutes. We have a way in debate of laying certain predicates and proceedings to a conclusion, and there are sufficient predicates in many propositions that come before us, if they are stated categorically, to require five minutes to state them. Therefore I insist that the five minutes rule is too short, and I hope that the Convention will join in the amendment and permit the limit to be put at ten minutes and not five.

MR. GILMORE—Judging from the quality of the speeches this Convention has been forced to listen to, it seems to me that one minute is quite sufficient. Yesterday morning while the speech making was going on, I was compelled to wonder what sins we had committed on Sunday that we should be cursed in listening to the speeches that we were forced to listen to on yesterday, and I for one, Mr. President, shall insist on the five minutes.

MR. KIRKLAND—I move to lay the amendment of the gentleman from Dale on the table.

Upon a vote being taken a division was called for, and by a vote of 43 ayes and 63 noes the motion to table was lost.

MR. SOLLIE—I move the adoption of the amendment.

MR. SMITH (Mobile)—I desire to call attention to the fact that the resolution introduced by the Committee is confined entirely to discussion upon amendments to reports and not to the reports themselves. It is to be presumed that where a more lengthy consideration of the purposes of the report are desired by the Chairman, that it will follow the course that was taken by the Chairman of the Committee on Executive Department, moving in the first place the adoption of the report, and giving the members ample time to discuss the purposes of the report as a whole. In the discussion here, there have been some amendments of very considerable importance offered before the House, and on which possibly it was reasonable to permit a longer debate than that prescribed by the resolution offered by the Committee, but the great quantity of amendments have not been of that character.

MR. O'NEAL (Lauderdale)—Will the gentleman from Mobile permit me to ask a question?

MR. SMITH—Yes sir.

MR. O'NEAL (Lauderdale)—Is it not a fact that the most important questions that have come before the Convention so far, have been on amendments to the original propositions?

MR. SMITH (Mobile)—Yes.

MR. O'NEAL (Lauderdale)—The ones requiring more consideration and debate?

MR. SMITH (Mobile)—In one or two instances, and I believe it to be the fact that some of the longest speeches could have been made, so far as the information that they gave the convention, or so far as they aided in reaching a conclusion, trimmed entirely of ornamentation, could have been made in less than five minutes. (Applause.)

I do not believe that if any of these gentlemen had been sitting by the side of his neighbor and had undertaken to give him instructions, and all the information and his reasons for voting for or against a proposition, that he could have talked three minutes to save his life without his neighbor asking him some question to stir him up.

Now, so long as it looked like we would get through with this debate within a reasonable period, I for one was in favor of allowing every gentleman to exhibit to the fullest extent his great ability for flights of imagination and oratory, but the hour is coming when not only the members of the Convention, but the people of the State, will become restless under the delays and procrastinations of this Convention, and it seems to me that it would be better to adopt the five minute rule, and if we do find some gentleman speaking that is so pregnant with thought that he cannot deliver himself within that time, we can ask unanimous consent to hear him for a longer period. I am afraid that might break the hearts of some of our orators, however.

MR. PETTUS—It seems to me that this is rather an anomalous procedure, for a deliberative body to adopt such a stringent rule for cutting off debate. I believe that one of the chief objects for assembling together of the delegates and representatives of the people in this convention, was for the purpose of deliberation, in order that they might discuss these great questions that come up, some of the most important of which have come before the convention by amendments offered to different propositions by different delegates, and it seems to me that it is very improper for this body to adopt a rule at this time which will limit delegates to ten minutes debate upon amendments, except by unanimous consent, which in hot weather is very difficult to obtain, when the temper of delegates are not as calm and serene as they would be on the snowy heights of Monte Sano. We have already in the rules of this Convention, a limit on debate, and a limitation on the number of speeches. Rule fourteen, on page six, lim-

its speeches to thirty minutes, and it seems short time in which to discuss the pros and cons of any great constitutional question. The action of this body is final. It is not like a General Assembly, when the House can force under its cloture rule a measure through the lower house, and then, it is found that they have made a mistake, the friends of the bill in the House can go before the Senate Committee and have it side-tracked, or if it gets through the Senate, members of the Senate seeing they have made a mistake, can go to the Governor and get him to hold it up. The action of this Convention is final, and I think it would be very unwise to adopt a rule that is going to bind us down and limit debate on amendments on any important question to five or ten minutes. Within the last two or three weeks we have seen some remarkable instances of the change of sentiment in this Convention brought about by unlimited debate.

Now as the matter stands at this time, under the rules of this Convention, a majority of the delegates present, at any time, can cut off debate absolutely, under a call for the previous question, or a motion to lay on the table, which has precedence over any other motion, except a motion to adjourn. I am willing to see the debate cut off at any time when a majority of the delegates upon this floor say that they have made up their minds upon a subject, and that they are ready to vote, and they are tired of hearing the question discussed; but until the times comes when a majority of the delegates are satisfied that the question has been sufficiently discussed, and sufficiently argued, I am opposed to being put in the power of any single delegate, by objection, on a hot July day, to cut off debate and force the Convention to premature action on any of these questions.

Now it has been said that the people are restless, and that this Convention is getting restless, but I do not care how restless they may become, or how restless certain members of the Convention and certain people may get to be, I do not believe it is right or wise or patriotic for any rule to be adopted in this Convention, by which measures may be railroaded through, or by which wise, just and equitable amendments, offered to any proposition, may be side-tracked and laid on the table, and killed without a full, fair and free debate. I see, Mr. President, that the sentiment of the convention is in favor of cutting off debate on these propositions, and I simply rise to go on record here as raising my voice in protest against any such procedure.

I believe that the rules as they are, have gone too far in cutting off debate in a body of this character, from which there is no appeal, and here the action of the body is final. I believe that under the previous question, and under a motion to lay on the table, we put it in the power of the majority of the delegates to cut off debate at any time, and that we have gone far enough,

and that a step further will be absolutely dangerous to the liberties and to the rights of the people of this State, and I protest against this action of the Convention.

MR. ROGERS (Sumter)—I move the adoption of the amendment of the gentleman from Dale, and I move the previous question, upon the original section and the amendment.

MR. JONES (Montgomery)—Does the Chair recognize the gentleman from Sumter. There were several of us up.

THE PRESIDENT—The gentleman from Sumter is small and active, and I think got to his feet a little before the other gentlemen. The Chair recognizes him at any rate.

MR. ROGERS (Sumter)—I move the adoption of the amendment of the gentleman from Dale, in connection with the original section, as reported by the Committee.

The main question was ordered.

MR. SOLLIE—Mr. President, I do not know that I have a very great deal to say by way of closing the argument upon this amendment. As the opportunity has come, however—

MR. ROGERS (Sumter)—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. ROGERS (Sumter) — It seems that having called for the previous question upon the original section and upon this amendment, that the gentleman is out of order in speaking to the question. His amendment has been adopted.

MR. O'NEAL (Lauderdale)—No sir, it has not.

MR. SOLLIE—No sir.

MR. BROWNE—I make the point of order that the right to close, after the previous question has been ordered on the amendment and original section, or a resolution reported by the Committee, is with the chairman of the Committee reporting it.

THE PRESIDENT—It seems to the Chair that the point of order is well taken, and that the chairman of the Committee making the report would have the right to conclude the debate, where the proposition covers both.

MR. SOLLIE—A question of inquiry.

THE PRESIDENT—The gentleman will state the question.

MR. SOLLIE—As I understand the rule, where there is an amendment pending to an original proposition, and the previous question is moved upon each, that the order of the vote is first upon the amendment, and second upon the original proposition.

Now Mr. President if the two propositions are to be merged into one, I move a division of the previous question so that each may come up separately, and I may have a right to conclude the debate upon the amendment offered by me.

THE PRESIDENT—It seems to the Chair that as the rule authorizes only one person to conclude the debate under the call for the previous question, the chair would not be authorized to extend the privilege of closing the debate to two delegates. But the gentleman is entitled to a division of the question.

MR. SOLLIE—After it becomes two questions as I understand it, Mr. President—

THE PRESIDENT—The Chair rules that the acting Chairman of the Committee would be entitled to the floor if he desires it.

MR. SOLLIE—I have moved a division of the question, Mr. President.

THE PRESIDENT—The question is upon the question of debate, and as to who shall conclude the debate. The Chair is of the opinion that the gentleman is entitled to a division of the question, but the debate upon the whole matter is not yet closed, unless the acting chairman of the committee declines to debate it further. Does the gentleman from Mobile desire to conclude the discussion?

MR. SMITH (Mobile) — No sir, I do not care to add anything to the example I have protested against.

THE PRESIDENT—The question is on the amendment offered by the gentleman from Dale.

A division was called for and on a vote of 67 ayes to 38 noes the amendment was adopted.

The question recurred upon the resolution as amended, and a division being called for it was adopted by a vote of 76 ayes to 20 noes.

The question then recurred upon the original resolution as amended.

MR. JONES (Montgomery) — Has the previous question been called?

THE PRESIDENT—Yes sir.

MR. BROOKS—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman will state his parliamentary inquiry.

MR. BROOKS—Is the effect of the resolution now on its passage to deprive the chairman of the committee or the mover of a resolution under the previous question of the thirty minutes to close? Does it limit that to ten minutes also?

THE PRESIDENT—The Secretary will read the resolution again.

MR. BROOKS—If it is in order I move—

THE PRESIDENT—An amendment is not in order at this time.

MR. LONG (Walker) — I understood the gentleman from Dale accepted the amendment of the gentleman from Lauderdale, excepting as to the report of the Committee on Suffrage.

MR. SOLLIE—I tried to, but could not.

THE PRESIDENT—The gentleman from Chambers (Heflin) objected and the proposition is not debatable.

MR. LONG—Would it not be in order now to offer that?

THE PRESIDENT—Not when the previous question is ordered.

On a viva voce vote the resolution was adopted as amended.

MR. DENT—I have a resolution that I wish to offer, and I ask that the rules be suspended in order that it may be placed upon its immediate passage.

The Secretary read the resolution as follows:

Resolution 216:

That hereafter the hours of the session of this Convention shall be as follows: Meet daily at 9:30 a. m. and adjourn at 1 p. m.; meet at 3:30 p. m. and adjourn at 6 p. m.

MR. DENT—I have noticed that at 3 o'clock, the present hour for meeting of the afternoon session, that the House is usually very thin, and a great many delegates come in after the roll call, it seems to me that we could have a half hour in the morning and a half hour in the afternoon with great comfort and satisfaction, and thereby add an hour to the daily sessions of the Convention. I move to suspend the rules and that the resolution be placed upon its passage.

MR. REESE—Upon that motion I would like this Convention to go on record, and I demand the ayes and noes.

The call for the ayes and noes was not sustained.

MR. BULGER—I desire to offer an amendment.



THE PRESIDENT—Amendments are not in order, as the question is on the suspension of the rules.

MR. BROWNE—I call for the reading of the resolution—there is some misunderstanding.

The secretary again read the resolution.

A vote being taken the rules were suspended, there being 68 ayes and 22 noes.

MR. BULGER—I desire to offer an amendment.

“Strike out 3:30 and add 4 p. m.”

MR. O'NEAL (Lauderdale)—I have an amendment to offer.

The clerk read the amendment as follows: “Strike out 9:30 a. m. and insert 10 a. m.

THE PRESIDENT—There is an amendment pending.

MR. BULGER—I would ask unanimous consent to accept the amendment of the gentleman from Lauderdale.

Objection being made unanimous consent was refused.

MR. REESE—I move to table the amendment offered by the gentleman from Tallapoosa.

The Chair recognized the gentleman from Lauderdale for the purpose of offering an amendment to the amendment. The secretary will please read the amendment to the amendment.

The secretary read as follows: Amend the amendment by adding 10 a. m. instead of 9:30 a. m.

MR. REESE—I move to table the amendment offered by the gentleman from Lauderdale to the amendment offered by the gentleman from Tallapoosa, and the amendment offered by the gentleman from Tallapoosa.

A vote being taken the amendments were laid upon the table.

MR. PETTUS (Limestone)—I move to strike out 6 p. m. and insert in lieu thereof 5:30 p. m.

MR. REESE—I move to lay that amendment on the table.

A vote being taken the amendment was tabled.

MR. CARMICHAEL (Coffee)—I have a resolution that I desire to offer as a substitute.

MR. REESE—I move the previous question upon the resolution.

**THE PRESIDENT**—Does the gentleman yield to the gentleman from Coffee?

Mr. Reese declined to yield, and a vote being taken the previous question was ordered. The Chair recognized Mr. Dent, the mover of the resolution.

**MR. DENT**—I do not desire to add anything. Under my resolution the Convention begins sooner in the morning, and gains one hour, and I hope the resolution will be adopted.

A vote being taken the resolution was adopted.

**MR. CRAIG (Dallas)**—I have a petition that I desire to have read.

**THE PRESIDENT**—The rules do not provide for the reading of petitions unless the Convention so orders.

**MR. CRAIG**—I would like to have the consent of the Convention to introduce that petition.

The Convention consented to the reading of the petition.

To the Constitutional Convention of the State of Alabama:

Gentlemen — The undersigned women tax payers of Madison county, Alabama, respectfully petition and memorialize your honorable body to incorporate in the Constitution for the State of Alabama, which you are now formulating, a provision for woman suffrage, or at least a provision authorizing all women who are residents of the State of Alabama, and who are tax payers or property owners therein, to vote on all questions affecting their property or the taxation thereof, and on all questions affecting education.

We base this request and petition upon the time-honored principle that "taxation without representation is unjust," and that "governments derive their just power from the consent of the governed." We maintain that these just principles are as applicable to the taxation of the property of women as of men, and to the government of women as of men. We protest that the taxation of women and their property, without giving them a voice in elections affecting their taxation, is unfair and a denial of their just rights. We insist that these powers of government are only just which are derived from the consent of the governed, and that the consent of women of Alabama to government affecting their rights and property can only be obtained by giving them the right of suffrage.

Respectfully submitted—

Virginia Clay Glopton, Celeste C. Clay, Virg E. Adams, Mary E. Robertson, Laura M. Howlett, Laura B. Rowe, Sarah J. Pee-

vey, Mrs. Ben P. Hunt, Ellelee Chapman Humes, Mary Cumming, Bettie Davis, Mary Dowd, Mary H. Dowd, M. L. McGee, Mrs. Kate Milligan, Mrs. Carrie H. Martin, Mrs. J. C. Clanton, Mrs. Henry Bradford, Mrs. Vassar L. Allen, M. W. Wales, M. C. Veele, A. B. Robertson, V. Blackwell, V. H. Bradford, D. K. Carr, Mary Carr, A. C. Taylor, Alberta Taylor.

MR. GREER (Calhoun)—I move that the Convention vote the gentleman from Dallas a vote of thanks if he will not introduce any more resolutions upon that subject.

MR. CRAIG — That petition comes here from the ladies of Huntsville, from the county of Madison, and was presented to the Convention in a very respectful manner, and I cannot see why gentlemen should throw any discredit upon the ladies of Madison county, or upon the women generally, in the State of Alabama. They are ladies of this State, many of them widows with little children to support, whose property is taxed. They have a mere pittance to support those children—

MR. GREER—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. GREER—There is nothing before the Convention.

THE PRESIDENT—The point of order is well taken. Does the gentleman from Dallas (Mr. Craig) desire the petition referred to the Committee on Suffrage?

MR. CRAIG—Yes, sir.

THE PRESIDENT—The petition will be so referred.

On a call of the roll of standing committees, Mr. Jones (Montgomery) offered the following report, and resolution from the Committee on Executive Department:

MR. PRESIDENT—The Committee on the Executive Department direct me to ask that the Article on the Executive Department which has heretofore been adopted and been engrossed be ordered to a third reading, and they recommend the adoption of the accompanying resolution.

Thomas G. Jones, Chairman.

Resolution No. 217, by Mr. Jones of Montgomery:

Resolved, That the ordinance to create and define the Executive Department be now taken up and ordered to a third reading and final passage.

THE PRESIDENT—Does the gentleman from Montgomery ask unanimous consent?

MR. REESE—I object.

MR. JONES—The committee asks it. I submit it as a privileged matter, it is unfinished business of this House, and I am not even asking the courtesy, by carrying out unfinished business, and it is in order to have it fixed for a special time.

MR. BULGER—I desire to ask the gentleman from Montgomery a question.

THE PRESIDENT—Does the gentleman from Montgomery consent to be interrogated?

MR. JONES—Certainly.

MR. BULGER—I desire to ask the chairman of the committee if he has examined the ordinance and knows that it is correctly and accurately engrossed?

MR. JONES—I have examined it three times and it is absolutely correct.

MR. PILLANS—As passed?

MR. JONES—As passed. We made three corrections in it.

The motion of the gentleman from Montgomery to suspend the rules was adopted by a vote of 68 ayes to 18 nays.

THE PRESIDENT—The question recurs on the adoption of the resolution proposed by the gentleman from Montgomery.

MR. JONES—Now, I desire briefly to state that the committee thought that the work ought to be disposed of. In uniting on that, however, they have sacrificed their desire to make some amendments, but they believed it would provoke discussion, and they believe it is best as it is, and they therefore ask that the ordinance be placed upon its third reading and passed.

A vote being taken the resolution was adopted.

MR. HEFLIN (Chambers)—I rise to a question of inquiry.

THE PRESIDENT—The gentleman will state the inquiry.

MR. HEFLIN—Can any gentleman be allowed to offer an amendment or substitute for any section?

THE PRESIDENT—It seems to the Chair not.

MR. HEFLIN (Chambers) — There have been some ordinances offered and now in the hands of the Committee on Impeachment. A number of the members of this Convention have expressed a desire to discuss this matter, offer this amendment, and I hope this Convention will not at this time if it precludes any amendment, adopt this article.

MR. ASHCRAFT—We have a committee to which all ordinances that have been adopted will be referred for the purpose of harmonizing. If the article be put upon its third reading and passed, I desire to ask if the Committee on Harmony should desire to make some alteration, so as to harmonize that chapter with some other chapter, would it then be in order to do so?

THE PRESIDENT—The inquiry is so far reaching that the Chair would dislike to pass on that question without further consideration.

MR. OATES — Mr. President, I would say, in reference to that, in my limited experience in such matters, I know how it was in the Convention of 1875, when that committee made its report there were some changes in it. All the changes were before the Convention, and so far as accepted by the Convention conclusive, but changes made in it were open to the Convention at the time when the committee reported.

MR. LONG (Walker)—I rise to a question of parliamentary inquiry.

THE PRESIDENT — The gentleman will state the parliamentary inquiry.

MR. LONG—Would it not be in order to offer to strike out any particular section of this report as a whole?

THE PRESIDENT—Not after it has been ordered to a third reading.

MR. REESE—I desire to make a motion to rescind the action of this Convention in adopting Section 30 of this article of Executive Department.

MR. JONES (Montgomery)—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. JONES—When Section 30 was adopted the gentleman voted against it, and did not give any notice of a motion to reconsider, and he is now too late to make that motion, even if amendment could be allowed.

THE PRESIDENT—It seems to the Chair—

MR. REESE—Will the Chair hear from me on that point?

THE PRESIDENT—The Chair will be glad to hear from the gentleman from Dallas.

MR. REESE—Mr. President, I withdraw that motion, and I now move to rescind the action of this Convention by a motion to reconsider the action of this Convention by which it was ordered to a third reading and engrossed.

MR. JONES—I would like to inquire of the gentleman if he did not vote on the losing side?

MR. REESE—I will state to the gentleman I am not making a motion to reconsider, but to rescind the action of this Convention.

MR. JONES—There is no such motion under the rules.

MR. REESE—If the gentleman will read Robert's Rules of Order he will find that there is such a rule, Section 25.

MR. JONES—Not under the Rules of our Convention.

MR. REESE—I desire to call the attention of the Chair to Section 25: "When an assembly wishes to annul some action it has previously taken and it is too late to reconsider the vote, the proper course to pursue is to rescind the objectionable resolution, order or other proceeding. This motion has no privilege, but stands on a footing with a new resolution. Any action of the body can be rescinded regardless of the time that has elapsed." I am going to stick to my first proposition, a motion to rescind the action of this Convention by which Section 30 of this article on Executive Department was adopted. It is too late for reconsideration, and that is the only method in my opinion by which it can be done.

MR. JONES—I beg to submit on that—and the Chair perhaps would be willing to be advised, as the parliamentarians say, that we are not operating under Robert's Rules of Order in the first place, and in the second place we are operating under rules of our own and in the third place he cannot escape the rules of reconsideration by saying that he wants to reconsider not by motion to reconsider, but a motion to rescind. A motion to rescind with a subsequent action taken with reference to some matter theretofore passed such as rescinding the resolution about Andrew Jackson as done in Congress but even under the gentleman's contention it would have to go to the Committee and could not be considered now.

THE PRESIDENT—It seems to the Chair that possibly it is in the power of the Convention to rescind any action that it may have taken, just as a legislature might repeal any bill that it has passed, but to do so the proposition to rescind would have to go through the same formula that the ordinance did. It would have to be regularly introduced, referred and reported and the Chair cannot entertain a motion of that sort one tenus.

MR. LONG (Walker) — I move to reconsider the vote by which the article was ordered to a third reading.

THE PRESIDENT—It would seem to the Chair that a motion to reconsider would be in order, and the Chair entertains the question, but it would go over until tomorrow morning.

MR. LONG—Under Rule 27, I move that we now reconsider it.

MR. JONES—I ask the House by unanimous consent to do so if they want to reconsider.

THE PRESIDENT—It can only be done by suspension of the rules.

MR. JONES—I hope the House will give unanimous consent and let us get through—on behalf of the Committee, I ask it.

THE PRESIDENT—There is no motion before the Chair, the Chair has ruled the motion out of order.

MR. JONES—I move unanimous consent that the gentleman be allowed to offer his amendment—I have a right to do that.

THE PRESIDENT—The gentleman asks unanimous consent that the Convention take up the motion at once of the gentleman from Walker to reconsider. Is there objection?

Objection was made.

THE PRESIDENT — The Chair would suggest to the distinguished gentleman from Montgomery that a motion to suspend the rules would be in order, and does not require unanimous consent.

MR. ROBINSON (Chambers)—I rise to a point of inquiry.

THE PRESIDENT—The gentleman will state his point of inquiry.

MR. ROBINSON—After this Article has been referred to the Committee on Harmony, and that Committee reports, if it be subject to amendment then they can strike out that Article.

MR. WILLIAMS (Marengo) — I move that the rules be suspended, and that the Convention now take up the motion of the gentleman from Walker (Mr. Long.)

MR. BULGER—I call attention to Rule 27: “When a vote has passed, except on the previous question, or on a motion to lay on the table, or to take from the table, it shall be in order for any delegate who voted with the majority to move for a reconsideration thereof on the same day, or within the morning session of the succeeding day, and such motion, if made on the same day, shall be considered immediately after the approval of the Journal on the day succeeding that on which it is made: but if first moved on such succeeding day, it shall be forthwith considered; and when a motion for reconsideration is decided, that decision shall not be considered, and no question shall be twice reconsidered. A motion to reconsider a vote, upon any incidental or subsidiary question, shall not remove the main subject under consideration

from the House, but shall be considered at the time when it is made; provided, that any vote taken on the last day of the session of this Convention may be reconsidered on the same day."

The question I desire to ask is if a motion is made not on the succeeding day, but made on any succeeding day does not the rule apply as if it had been made on the first succeeding day. This motion would have to be immediately considered now. In other words, a motion to reconsider, there is only one motion that goes over to the succeeding day, that is the motion on the same day, all others must come up immediately.

THE PRESIDENT—The Chair would call attention to the fact that the motion now sought to be reconsidered was made to-day, ordered to a third reading, and the motion to reconsider is to reconsider the action of this Convention, whereby the ordinance was ordered to a third reading, and the gentleman from Marengo moves that the rules be suspended for the purpose of taking up consideration at once.

MR. PILLANS—I rise to a point of inquiry.

THE PRESIDENT—The gentleman will state the point of inquiry.

MR. PILLANS—Does the record show that any motion to reconsider Section 30 was made on the day on which the Section was adopted, or on the day next succeeding, or is this an original motion coming in too late under Rule 27?

THE PRESIDENT—The gentleman from Mobile seems to misapprehend the scope of the motion of the gentleman from Walker. The motion is to reconsider the action by which this Convention ordered this report to a third reading, which action was taken today. The gentleman from Marengo moves to suspend the rules that this motion may be taken up and reconsidered at this time.

A vote was then taken and the motion to suspend the rules was sustained by a vote of 59 ayes to 23 noes.

MR. LONG (Walker)—Is an amendment in order?

THE PRESIDENT—Motion to reconsider is in order.

MR. WILLIAMS (Marengo)—I move to lay the motion to reconsider on the table.

MR. LONG (Walker)—On that I call for the ayes and noes.

The requisite number did not rise and the call for the ayes and noes was not sustained.

MR. HEFLIN (Chambers)—I rise to a question of parliamentary inquiry.



THE PRESIDENT—The gentleman will state his point of parliamentary inquiry.

MR. HEFLIN—Will a motion be in order when the article is ordered to a third reading to strike Section 30 from it?

THE PRESIDENT—The Chair is of the opinion that a motion to amend would not be in order after the ordinance is ordered to a third reading.

MR. HEFLIN—Then I move that the Convention rescind its action in ordering the whole article to a third reading.

THE PRESIDENT—That is not in order, the question is upon the motion to lay upon the table the motion to reconsider action of this Convention whereby the ordinance was ordered to a third reading.

MR. HEFLIN—I understand that was done.

THE PRESIDENT—A division was called for and by a viva voce vote it seemed to the Chair that the ayes had it. Thereupon a division was called for and ayes and nays demanded, and the call was not sustained. As many as favor the motion to table will please rise and remain standing until they are counted.

By a vote of 55 ayes to 43 noes the motion to reconsider was laid upon the table.

MR. JONES (Montgomery)—I now call for the previous question on the article as engrossed.

MR. SOLLIE—I request the gentleman to withdraw that for a moment. I have an amendment.

MR. JONES—I would like to do it, but there are a great many questions that we have yielded ourselves.

MR. LONG—I hope the gentleman will at least give us the opportunity of protesting against the article?

MR. JONES—The gentleman can do that on the minutes, on the stump, or in the public press; I would not insist upon it but have debated it five or six days. I move the suspension of the rules on the adoption of the ordinance.

The President—It seems to the Chair that under the resolution offered by the gentleman from Montgomery, the ordinance was ordered to a third reading.

MR. JONES—It was and nothing can be done, but some of my parliamentary friends say it might, and I want to cut them off.

MR. HEFLIN (Chambers)—I desire to make a motion to postpone the pending question until Monday next.

MR. JONES—I move to lay the motion on the table.

THE PRESIDENT—The ordinance has been ordered to a third reading and the question is on the adoption. The Secretary will read the ordinance.

MR. REESE—I rise to a question of inquiry. After this ordinance has been read a third time will not the question then be on the adoption of the article?

THE PRESIDENT—It will.

MR. REESE—Will not that be considering the article? It has been ordered to a third reading and following the third reading will be the question of adoption. Now it is not in order for the Convention to postpone the further reading of the article and consideration for adoption until Monday morning as moved by the gentleman from Chambers?

THE PRESIDENT—It seems to the Chair that after the ordinance is ordered to a third reading that nothing is in order except the third reading of the ordinance, unless reconsidered, and the Convention has refused to reconsider the action by which it was ordered to a third reading.

MR. SOLLIE—I rise to a point of order. The postponement was demanded by the gentleman from Chambers. I make the point of order that when the question before the House is the reading of the ordinance, that a motion for the previous question for adoption is out of order and cannot be made until after the reading.

THE PRESIDENT — There is no such question pending. The ordinance has been ordered to a third reading.

MR. LONG (Walker)—I move to lay Article V on the table.

THE PRESIDENT—The motion is out of order.

MR. BROWNE—After an ordinance has been ordered to a third reading, no motion is in order except the third reading and adoption or rejection of that ordinance, except a motion to reconsider the vote by which it was ordered to a third reading.

MR. REESE — I desire to make a motion to postpone the third reading of this section until Monday morning at 11 o'clock.

In the opinion of the chair, the motion is out of order.

The Article was read as follows:

#### AN ORDINANCE

To Create and Define the Executive Department.

Be it ordained by the people of Alabama, in convention assembled, That Article V of the Constitution be stricken out and the following Article inserted in lieu thereof:

## ARTICLE V.

## Executive Department.

Section 1. The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Education, Commissioner of Agriculture and Industries and a Sheriff for each county.

Sec. 2. The Supreme Executive power of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of Alabama."

Sec. 3. The Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendent of Education, and Commissioner of Agriculture and Industries, shall be elected at the same time and place appointed for the election of members to the General Assembly in 1902 and every four years by the qualified electors of the State.

Sec. 4. The return for every election for Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Education, and Commissioners of Agriculture and Industries, shall be sealed up and transmitted by the returning officers to the seat of Government, and directed to the Speaker of the House of Representatives, who shall, during the first week of the session to which such returns shall be made, open and publish them in the presence of both houses of the General Assembly in joint convention; but the Speaker's duty and the duty of the joint convention shall be purely ministerial. The result of the election shall be ascertained and declared by the Speaker from the face of the returns without delay. The person having the highest number of votes for any one of said offices shall be declared duly elected; but if two or more persons shall have an equal and the highest number of votes for the same office, the General Assembly, by joint vote, without delay, shall choose one of said persons for said office. Contested elections for Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Education, and Commissioner of Agriculture and Industries, shall be determined by both houses of the General Assembly, in such manner as may be prescribed by law.

Sec. 5. The Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, State Auditor, Superintendent of Education and Commissioners of Agriculture and Industries, elected in 1902, shall hold their respective offices for the term of four years, from the 15th day of November of the year in which they shall have been elected, and until their successors shall be elected and qualified and after the first election under this Constitution, no one of said officers shall be eligible as his own successor; and the Governor shall not be eligible to election or appointment to any office under this State or to the Senate of the United States within one year after the expiration of his term.

Sec. 6. The Governor and Lieutenant Governor shall each be at least thirty years of age when elected, and shall have been citizens of the United

States ten years and resident citizens of this State at least seven years next before the date of their election. The Lieutenant Governor shall be ex officio President of the Senate, which shall elect a President pro tem, from among its own members, who shall discharge the duties of the Lieutenant Governor in the Senate whenever he is absent or disqualified, but the Lieutenant Governor, when acting as President of the Senate, shall have no right to vote except in the event of a tie.

Sec. 7. The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Industries, Attorney General, Superintendent of Education shall receive compensation for their services, which shall be fixed by law, and which shall not be increased or diminished during the term for which they have been elected, and shall except the Lieutenant Governor, reside at the Capitol, during the time they continue in office, except in cases of epidemic. The Lieutenant Governor shall be paid the same compensation as that received by the Speaker of the House except when serving as Governor, when he shall receive the salary of said officer.

Sec. 8. If the session of the General Assembly next after the ratification of this Constitution shall enact a law increasing the salary of the Governor, such increase shall become effective and apply to the first Governor elected after the ratification of this Constitution if the General Assembly shall so determine.

Sec. 9. The Governor shall take care that the laws be faithfully executed.

Sec. 10. The Governor may require information in writing, under oath, from the officers of the Executive Department named in this article, or created by statute, on any subject relating to the duties of their respective offices; and he may at any time require information in writing, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions. Any such officer or manager who makes a wilfully false report, or fails without sufficient excuse to make the required report when demanded, is guilty of an impeachable offense.

Sec. 11. The Governor may by proclamation on extraordinary occasions, convene the General Assembly at the seat of Government or at a different place, if since their last adjournment, that shall have become dangerous from an enemy, insurrection, or other lawless outbreak, or from any infectious or contagious diseases, and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

Sec. 12. The Governor shall from time to time, give to the General Assembly information of the state of the government, and recommend to their consideration, such measures as he may deem expedient; and at the commencement of each regular session of the General Assembly, and at the close of his term of office, give information by written message of the condition of the State; and he shall account to the general Assembly, as

may be prescribed by law, for all moneys received and paid out by him, or by his order; and, at the commencement of each regular session, he shall present to the General Assembly estimates of the amount of money required to be raised by taxation for all purposes.

Sec. 13. The Governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law; and, after conviction, to grant reprieves, paroles, commutations of sentence and pardons except in cases of impeachment. The Attorney General, Secretary of State and State Auditor, shall constitute a Board of Pardons, who shall meet on the call of the Governor, and before whom shall be laid all recommendations or petitions, for pardon or commutations or paroles, in cases of felony; and the Board shall hear them in open session, and give their opinion in writing, to the Governor thereon, after which or on the Board's failure to advise for more than sixty days, the Governor may grant or refuse the commutation, parole or pardon, as to him seems best for the public interest. He shall communicate to the General Assembly at each session, each case of remission of fines and forfeitures, reprieve, commutation, parole or pardon, with his reasons therefor, and the opinion of the Board of Pardons in each case required to be referred; stating the name, the crime of the convict, the sentence, its date and the date of reprieve, commutation, parole or pardon. Pardons in cases of felony and other offenses involving moral turpitude, shall not relieve from civil and political disabilities, unless specifically expressed in the pardon, and approved by the Board of Pardons.

Sec. 14. Every bill which shall have passed both Houses of the General Assembly shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it. If the Governor's message proposes no amendment which would remove his objection to the bill the House in which the bill originated may proceed to reconsider, and if a majority of the whole number elected to that House vote for the passage of the bill, the bill shall be sent to the other House, which shall in like manner, reconsider and if a majority of the whole number elected to that house, vote for the passage of the bill, the same shall become a law notwithstanding the Governor's veto. If the Governor's message proposes amendment which would remove his objections, the House to which it is sent may so amend the bill, and send it with the Governor's message to the other House, which may adopt, but cannot amend said amendment; and both Houses concurring in the amendment, the bill shall again be sent to the Governor and acted on by him as on other bills. If the House to which the bill is returned refuses to make such amendment, it shall proceed to reconsider; and if a majority of the whole number elected to that House shall vote for the passage of the bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the whole number of that House, it shall become a law. If the House to which the bill is returned makes the amendment and the other House declines to pass the same, that House shall proceed to reconsider, as though the bill had originated therein, and such proceedings shall be taken thereon as above provided. In every case, the vote of both Houses shall be determined by

yeas and nays, and the names of the members voting for or against the bill, shall be entered upon the Journals of each House respectively. If any bill shall not be returned by the Governor, Sundays excepted, within six days after it shall have been presented the same shall become a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not be a law; but when return is prevented by recess such bill must be returned to the House in which it originated within two days after reassembling, otherwise it shall become a law; but bills presented to the Governor within five days before the adjournment of the General Assembly may be approved by the Governor at any time within ten days after the final adjournment, if approved and deposited with the Secretary of State within that time. Every vote, order or resolution to which concurrence of both Houses may be necessary, except questions of adjournment, and the bringing on of elections by the two Houses, and amending this Constitution, shall be presented to the Governor; and, before the same shall take effect, be approved by him; or, being disapproved, shall be repassed by both Houses according to the rules and limitations prescribed in the case of a bill.

Sec. 15. The Governor shall have power to approve or disapprove any item or items of any bill making appropriations embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the Executive veto; and he shall in writing, state specifically the item or items he disapproves, setting the same out in full in his message; but in such case, the enrolled bill shall not be returned with the Governor's objection.

Sec. 16. In case of the Governor's removal from office, death or resignation the Lieutenant Governor shall become Governor. If both the Governor and Lieutenant Governor are removed from office, die, or resign, prior to the next general election, after their election for members of the General Assembly, the Governor and Lieutenant Governor shall be elected at such election for the unexpired term and in the event of a vacancy in the office, caused by the removal from office, death or resignation of the Governor and the Lieutenant Governor, pending such vacancy and until their successors shall be elected and qualified, the office of Governor shall be held and administered by either the President pro tem of the Senate, the Speaker of the House of Representatives, Attorney General, Auditor, Secretary of State or Treasurer and in the order herein named. In case of the impeachment of the Governor, his absence from the State for more than twenty days, unsoundness of mind, or other disability, the power and authority of the office shall devolve, in the order herein named, upon the Lieutenant Governor, President pro tem of the Senate, Speaker of the House of Representatives, Attorney General, State Auditor, Secretary of State and State Treasurer; if any of these officers be under any of the disabilities herein specified, the office of Governor shall be administered in the order named by these officers free from such disability, until the Governor is acquitted, returns to the State, or is restored to his mind, or relieved from other dis-

ability. If the Governor shall be absent from the State over twenty days, the Secretary of State shall notify the Lieutenant Governor, who shall enter upon the duties of Governor and so on; in case of such absence, he shall notify each of the other officers named in their order, who shall discharge the duties of Governor, until the Governor or other officers entitled to administer the office in succession to the Governor, returns. If the Governor-elect fails or refuses from any cause to qualify, the Lieutenant Governor-elect shall qualify, and exercise the duties of the Governor's office until the Governor-elect qualifies; and in event both the Governor-elect and Lieutenant Governor-elect, from any cause, fail to qualify, the President pro tem of the Senate, the Speaker of the House of Representatives, the Attorney General, State Auditor, Secretary of State, and State Treasurer shall in like manner, in the order named, administer the Government until the Governor or Lieutenant Governor-elect qualifies.

Sec. 17. If the Governor or other officer administering the office shall appear to become of unsound mind, it shall be the duty of the Supreme Court of Alabama, upon request in writing of any two of the officers named in Section 15, not next in succession to the Governor, to ascertain the mental condition of the Governor, or other officer administering the office—and if he is of unsound mind, to so certify upon its minutes; a copy of which, duly certified, shall be filed in the office of the Secretary of State; and in that event, it shall be the duty of the officer next in succession, to perform the duties of the Governor, until the Governor or other officer administering the office is restored to his mind. When the incumbent denies that the Governor or other person entitled to administer the office, has been restored to his mind, the Supreme Court, at the instance of any officer named in Section 15, shall ascertain the truth concerning the same, and, if the officer has been restored to his mind, shall so certify on its minutes and file a duly certified copy thereof with the Secretary of State, and in that event, his office shall be restored to him. The request in writing hereinabove provided for, shall be verified by the affidavit of those making such request. And the Supreme Court shall prescribe rules of practice in such proceedings, which rules shall include a provision for the service of notice on the Governor of such proceeding, and the method of taking testimony therein.

Sec. 18. The Lieutenant Governor, the President pro tem. of the Senate, and the Speaker of the House of Representatives, Attorney General, Secretary of State, and State Treasurer, while administering the office of Governor, shall receive like compensation, and no other than that prescribed by law for the Governor.

Sec. 19. No person shall at one and the same time hold the office of Governor of this State, and any office, civil or military, either under this State or the United States, or any other State or government, except as otherwise provided in this Constitution.

Sec. 20. The Governor shall be commander-in-chief of the militia and volunteer forces of this State, except when they shall be called into the service of the United States, and he may call out the same to execute the laws,

suppress insurrection, and repel invasion; but need not command in person unless directed to do so by resolution of the General Assembly, and, when acting in the service of the United States, he shall appoint his staff, and the General Assembly shall fix his rank.

Sec. 21. No person shall be eligible to the office of Secretary of State, State Treasurer, State Auditor, Superintendent of Education, Attorney General, or Commissioners of Agriculture and Industries, unless he shall have been a citizen of the United States at least seven years, and shall have resided in this State at least five years next preceding his election, and shall be at least 25 years old when elected.

Sec. 22. There shall be a great Seal of State which shall be used officially by the Governor, and the Seal now in use shall continue to be used, until another shall have been adopted by the General Assembly. Said Seal shall be called The Great Seal of the State of Alabama.

Sec. 23. The Secretary of State shall be the custodian of the Seal of the State, and shall authenticate therewith all official acts of the Governor; his approval of laws, resolutions, appointments to office and administrative orders, excepted. He shall keep a register of the official acts of the Governor, and when necessary, shall attest them and lay copies of same, together with copies of all papers relative thereto, before either House of the General Assembly, when required to do so, and shall perform such other duties as may be prescribed by law.

Sec. 24. All grants and commissions shall be issued in the name and by the authority of the State of Alabama, sealed with the Great Seal and signed by the Governor and countersigned by the Secretary of State.

Sec. 25. Should the office of Secretary of State, State Auditor, State Treasurer, Attorney General, Superintendent of Education, or Commissioner of Agriculture and Industries become vacant, for any cause, the Governor shall fill such vacancy until the disability is removed or a successor elected and qualified. In case any of said officers shall become of unsound mind, such unsoundness shall be ascertained by the Supreme Court upon the suggestion of the Governor.

Sec. 26. The State Treasurer, State Auditor, Attorney General, and the Commissioner of Agriculture and Industries shall perform such duties as may be prescribed by law. The State Treasurer and State Auditor shall every year at a time the General Assembly may fix make a full and complete report to the Governor, showing the receipts and disbursements of revenues of every character, and all claims audited and paid out by items, and all taxes and revenues collected and paid into the Treasury, and from what sources and they shall make reports oftener upon any matters pertaining to their office if required by the Governor or General Assembly.

Sec. 27. The State Auditor, State Treasurer, Attorney General, Secretary of State and Commissioner of Agriculture and Industries shall not receive to their use, any fees, costs, perquisites of office, or other compensation than their salaries as prescribed by law, and all fees that may be



payable for any services performed, through such officers, shall be at once paid into the State Treasury.

Sec. 28. A Sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for a term of four years unless sooner removed, and shall be ineligible to such office as his own successor. Whenever any prisoner is taken from the jail or from the custody of the Sheriff or his deputy, and put to death, or suffers grievous bodily harm, owing to the neglect, connivance, cowardice or other grave fault of the Sheriff, such Sheriff may be impeached under Section 2 of Article VII. of the Constitution; and the Governor when satisfied, after hearing the Sheriff, that he should be impeached, may suspend him from office until the impeachment proceedings are decided. If the Sheriff be impeached, he shall not be eligible to hold any other office in this State during the time for which he had been elected to serve as Sheriff.

MR. JONES (Montgomery) — Under the rules of the convention, there has to be an aye and no vote.

MR. LONG (Walker)—Under Rule 37. I call for a separation of Section 30 from the remainder of the Article.

THE PRESIDENT—In the opinion of the chair there can be no division. The question is before the Convention on the adoption of the Whole Article.

MR. REESE—Is it not a debatable question as to whether we will adopt the Article?

THE PRESIDENT—It seems to the chair not after it was ordered to a third reading.

MR. REESE—Is it possible that the adoption of an ordinance in its entirety is not a debatable question?

THE PRESIDENT—The ordinance is not open for amendment.

MR. REESE—But is the question not open as to whether we will adopt it in the shape it is in? I do not mean to say that we will argue as to whether any amendment should be made, but have not the members of this Convention the right to argue against the adoption of this Article at all?

THE PRESIDENT—The chair recognized the gentleman from Dallas and has allowed him to proceed, hearing no objection to the debate.

MR. COFER—Well, I object right now to the debate.

MR. HEFLIN (Chambers) — But the chair announced, I thought, he had heard no objection.

MR. REESE—I had the consent of the House.

MR. COFER—I rise to a point of order. This is not debatable after the previous question has been ordered, and the Article ordered to its third reading. It is not open for amendment or debate.

THE PRESIDENT—It seems to the chair the point of order is well taken. After the Article is ordered to its third reading, it is not open to amendment or debate. When the gentleman from Dallas rose, the chair did not know for what purpose he rose, and there was no objection, and the chair did not feel authorized to interpose any objection on his own account, but as objection is made, it seems to the chair the point of order is well taken.

MR. REESE—I move to strike out the enacting clause of this ordinance.

MR. LONG (Walker)—I second the motion.

MR. HARRISON—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. HARRISON—There is nothing in order but voting on the adoption of this Article.

THE PRESIDENT—The point is well taken.

MR. LONG (Walker)—Mr. President,—

THE PRESIDENT—For what purpose does the gentleman rise?

MR. LONG (Walker)—To a parliamentary inquiry.

THE PRESIDENT—What is the inquiry?

MR. LONG (Walker)—Ought not delegates be allowed to have spread upon the journal of the house why they object to Article 5. Debate has been shut off, the gag law has been applied, and I want to say why I object to the Article and I want my objections placed on record.

MR. JONES—I object. We debated this matter three days.

THE PRESIDENT—The Convention is in the act of taking a vote and the Chair cannot entertain a motion.

MR. LONG (Walker)—I don't make any motion. I was asking if I could spread my objection on the journal.

THE PRESIDENT—The Chair will give due investigation to the inquiry of the gentleman and will give an opinion later.

MR. BURNS—I rise for information.

THE PRESIDENT—The gentleman will propound his inquiry.

MR. BURNS—I want to know the effect of this ballot. Does this close the scene? Has the Convention at any time hereafter any right to amend or strike out or do anything?

MR. JONES (Montgomery.)—Mr. President—

THE PRESIDENT—The gentleman from Dallas has propounded an inquiry.

MR. JONES—I know what the gentleman is after and I want to answer his inquiry.

THE PRESIDENT—The gentleman is propounding it to the Chair. The Chair is of opinion that the question is now upon the final passage of this ordinance as read. It is not now, and will not be after it is passed open to amendment. The Secretary will continue the call of the roll.

MR. JONES (Montgomery)—I would like to state as it may have some effect upon the vote, that any member hereafter may offer an ordinance on any subject embraced in this report, and if acted on favorably could thus amend a section of this Article.

THE PRESIDENT—The Chair has so announced that the Convention can rescind any action it has taken but it has to be done by the introduction of a separate ordinance, reference to Committee, report, etc.

The roll was called on the adoption of the Article and resulted as follows:

#### AYES.

Messrs. President,	Davis, of Etowah,	Henderson,
Almon,	Dent,	Hinson,
Ashcraft,	Duke,	Hood,
Banks,	Eley,	Howze,
Beavers,	Eyster,	Inge,
Beddow,	Espy,	Jackson,
Bethune,	Fitts,	Jones, of Bibb,
Blackwell,	Fletcher,	Jones, of Hale,
Brooks,	Foshee,	Jones, of Montgomery,
Browne,	Foster,	Jones, of Wilcox,
Bulger,	Gilmore,	Kirk,
Burnett,	Glover,	Kirkland,
Burns,	Grant,	Knight,
Cofer,	Grayson,	Kyle,
Cornwall,	Greer, of Calhoun,	Ledbetter,
Craig,	Harrison,	Leigh,
Cunningham,	Heflin, of Randolph,	Lomax,

Lowe, of Jefferson,	Palmer,	Sorrell,
Lowe, of Lawrence,	Parker (Cullman),	Spears,
McMillan (Wilcox),	Parker (Elmore),	Spragins,
Martin,	Pettus,	Stoddard,
Maxwell,	Pitts,	Tayloe,
Merrill,	Reese,	Waddell,
Miller (Marengo),	Reynolds, of Henry,	Watts,
Miller (Wilcox),	Robinson,	Weakley,
Mulkey,	Rogers (Lowndes),	Weatherly,
Murphree,	Rogers (Sumter),	White,
NeSmith,	Sanders,	Whiteside,
Norman,	Searcy,	Willet,
Norwood,	Selheimer,	Williams (Barbour),
Oates,	Sentell,	Williams (Marengo),
O'Neal (Lauderdale),	Smith (Mobile),	Wilson (Clarke),
Opp,	Smith, Mac. A.,	Winn.
O'Rear,	Smith, Morgan M.,	

Total—101.

#### NOES.

Barefield,	Cobb,	Phillips,
Byars,	Davis, of DeKalb,	Proctor,
Cardon,	Greer, of Perry,	Reynolds (Chilton),
Carmichael, of Colbert,	Haley,	Sloan,
Carmichael, of Coffee,	Jenkins,	Sollie.
Carnathon,	Long, of Walker,	
Chapman,	Moody,	

Total—19.

#### ABSENT OR NOT VOTING.

Altman,	Heflin, of Chambers,	Pillans,
Bartlett,	Hodges,	Porter,
Boone,	Howell,	Renfro,
Case,	King,	Samford,
Coleman, of Greene,	Locklin,	Sanford,
Coleman, of Walker,	Long, of Butler,	Stewart,
deGraffenreid,	Macdonald,	Thompson,
Ferguson,	McMillan, of Baldwin,	Vaughan,
Freeman,	Malone,	Walker,
Graham, of Montgomery,	Morrisette,	Williams (Elmore),
Graham, of Talladega,	O'Neill, of Jefferson,	Wilson (Washington).
Handley,	Pearce,	

During the roll call Mr. Burns who had voted no, changed his vote to aye for the purpose of moving a reconsideration as to Section 30.

MR. REESE—I move to reconsider the vote by which this Article has been adopted.

MR. JONES (Montgomery)—And I move to lay that motion on the table.

MR. REESE—I make the point of order that cannot be done now. Under rule it goes over until tomorrow.

MR. JONES (Montgomery)—When a member gives notice of an intention to reconsider it goes over, but when a motion is made, can it not be taken up immediately?

THE PRESIDENT—The Chair will call the attention of the gentleman from Montgomery to rule 27. "When a vote has passed, except on the previous question, or on a motion to lay on the table, or to take from the table, it shall be in order for any delegate who voted with the majority to move for a reconsideration thereof on the same day, or within the morning session of the succeeding day, and such motion, if made on the same day, shall be considered immediately after the approval of the journal on the day succeeding that on which it is made; but if first moved on such succeeding day, it shall be forthwith considered." The motion will go over until tomorrow morning.

MR. JONES (Montgomery)—Then I move to reconsider the vote by which the ordinance was passed and I move to suspend the rules for the purpose of considering that motion now.

MR. LONG (Walker)—I make the point of order that the gentleman cannot do indirectly what he cannot do directly.

THE PRESIDENT—It seems to the Chair that the gentleman from Montgomery would be in order to move to suspend the rules and that this motion be considered now, if the Convention desires.

MR. SOLLIE—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point.

MR. SOLLIE—That that precise motion to reconsider was made by the gentleman from Dallas and the other motion is of equal dignity. We cannot accumulate motions to reconsider on the same matter.

THE PRESIDENT—The Chair understood the gentleman from Montgomery to move to suspend the rules that the motion of the gentleman from Dallas might be considered at once.

MR. SOLLIE—If that is the motion, my point of order is withdrawn. But I did not so understand the gentleman from Montgomery.

THE PRESIDENT—The Chair so understood it.

MR. BURNS—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. BURNS—The Chair has announced that it would lie over until tomorrow under the rules. If we have any rules now is the time to enforce them.

THE PRESIDENT—It would lie over under the rules unless the rules are suspended.

MR. REESE—If it is the purpose to save time by gagging the Convention and depriving the minority of any right—

THE PRESIDENT—The gentleman is not in order.

MR. JONES—We have already debated five days on this matter.

THE PRESIDENT—Gentlemen will be in order. Debate is not permissible.

A vote being taken, a call for the ayes and noes was not sustained, and on a division the house refused to table the motion to reconsider by a vote of 59 ayes and 37 noes.

MR. SOLLIE—I offer an ordinance.

THE PRESIDENT—It is not in order at this time except by unanimous consent.

Objection was made.

THE PRESIDENT—The regular order will be the consideration of the report of the Committee on Taxation and the gentleman from Talladega has the floor.

MR. BROWNE—I have only a few words more to say in regard to Section No. 5. Shortly before adjournment yesterday I read an extract from a letter received from the State Superintendent of Education of Louisiana with respect to local taxation for schools in that State wherein he stated that that tax was voted usually when submitted to the people by a majority in property and taxable value of property voting at such an election. I now desire to read an extract from a letter from the State Superintendent of Texas. The Constitution of Texas provides a local taxation for schools provided it is first submitted to a vote of the qualified electors upon whom the tax bears, and that it shall be voted for by a two-thirds majority thereof voting at such election. The Superintendent says:

“Answering your letter of the 17th inst. I beg leave to send you under separate cover a copy of our school laws, a copy of the last report of this department, copy of circular No. 16, from which you will be able to gather information relative to our school system, methods of taxation, etc.

As a general rule, the people of this State favor the special local tax feature. In my opinion, this tax subserves the highest school interests of the districts levying the same.

"The average school term in this State is about 5 1-2 months.

Now under the Constitution of Texas the Legislature of that State has to enact a law carrying that provision into effect the first section of which law reads as follows:

"The Commissioners' Court of the several counties of this State shall have power to levy a special tax for the further maintenance of public free schools and the erection within each school district of school buildings therein; provided, two-thirds of the qualified property tax paying voters of the district voting at an election to be held for the purpose, shall vote such tax, not to exceed in any year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district."

I will state that I had another letter from the Superintendent stating that that tax had been voted in every instance where it was submitted to the people.

MR. WHITE—That is for the school district and not for the county?

MR. BROWNE—It is for the school district.

Now I have a letter which is sample taken from the letters of Superintendents of States where the matter is left to the qualified electors alone. This letter is from the Superintendent of Education of Colorado, who by the way signs himself or herself Helen G. Greenfell. I desire to say that this is one of the best letters I have received.

"Colorado has State and local taxation for schools. The school electors of the various districts at a meeting called for the purpose, or in connection with the annual election of school directors, vote for such tax, the question being decided by a majority in numbers, no property qualification being necessary. Our school districts do not consist of counties; they consist of cities or various areas of territory.

In my opinion, a special local tax for schools is most beneficial in results.

Colorado appropriates no money from the general fund for schools.

The length of term of the free schools in this State varies from six months in the poorer districts to nine and one-half months in the cities."

The gentleman asks the question if the local tax is not levied in Texas by school districts. It is so levied and in the report

of the Committee on Taxation it is provided that this tax shall be only levied in counties or cities. We are not familiar with the conditions in Texas as we are with those in Alabama. After careful investigation, the committee came to the conclusion to allow this special tax to be voted in school districts would, in a very large number of the school districts of Alabama amount to taxation without representation. There are numerous townships in the State of Alabama that are school districts, where the owners of almost all the property and in some cases all are non-residents and don't live in the district. To allow a tax to be voted in the matter would be practical confiscation of their property. In a majority of the districts, the property holders do live within the district, and there would be no objection in cases of that kind to allowing the school districts voting the tax instead of the counties. But we must make this law to suit the different conditions in different counties.

MR. WATTS—May I ask the gentleman a question?

MR. BROWNE—Yes, sir.

MR. WATTS—For instance, take a county like Montgomery where a majority of the taxpayers and people reside inside the city and have to provide for their own schools. How many would the country precincts get if the citizens of Montgomery had to vote additional taxes on themselves?

MR. BROWNE—It would be owing to the liberality of the taxpayers and citizens of Montgomery.

MR. LOWE (Jefferson)—Will you pardon an interruption?

MR. BROWNE—When I get through answering the question of the gentleman from Montgomery. The city of Montgomery would levy the tax and would get a large part of it back.

MR. LOWE (Jefferson)—May I ask the question now?

MR. BROWNE—Yes.

MR. LOWE—Does the gentleman intend to say to the Convention that the free schools in the country districts of Alabama must be dependent upon the generosity of the taxpayers of the cities and towns?

MR. BROWNE—I do not, but every thinking man will know under this provision the poor country school districts will get more money than they would get if they were allowed to vote a tax upon themselves, because they would not pay as much of that tax as they would get back, the city paying most of the tax.

MR. WHITE—Provided they can get the city to vote the tax?



MR. BROWNE—Provided the cities are liberal enough to vote the tax. If the gentleman thinks this tax ought to be levied and appropriated back to the school districts and townships in proportion as it is paid by them, then let him offer an amendment and take the responsibility of saying that the money derived from taxation from the cities shall be appropriated exclusively to the city and that no part thereof shall go to the outlying poorer districts.

MR. WHITE—The tax rate in the city cannot exceed \$1.75.

MR. BROWNE—As a rule not, but Birmingham can do almost anything she wants.

MR. WHITE—No. There is 50 cents for the bonded debt and 65 cents for State tax, makes \$1.15, and 50 cents for general purposes for city, makes \$1.65, leaving only a small margin for city and county, 15 cents. Do you suppose the city will vote that 15 cents away from the city?

MR. BROWNE—It is owing altogether to the liberality in the city. I should think the city would be interested in the county surrounding the city and in the upbuilding of it and from that standpoint I should say the city would be willing to vote the tax and not get every bit of it back but that it should be appropriated to the whole county equitably as is done now in Alabama. Does the gentleman know that there are counties in Alabama that give for educational purposes three times the amount they do for other purposes?

MR. WHITE—That is what I was talking about the other day. You say you think the cities will be liberal enough to educate the outlying districts. I thought the State would be willing yesterday to help the outlying counties. (Applause.)

MR. BROWNE—I did not yield to the gentleman for the purpose of having him make a speech.

MR. WEAKLEY—Will the gentleman yield to a question from me?

MR. BROWNE—Yes.

MR. WEAKLEY—If the city is to be taxed to support the county schools, what provision is made to allow the city to support its own schools?

MR. BROWNE—If the gentleman had studied the ordinance as reported by the Committee he would see what provision is made. If the county levies that tax and levies all there is of it, then there is no room allowing the city to levy an additional tax.

MR. WEAKLEY—Then what are we to do with the city schools?

MR. BROWNE—What are you doing now?

MR. WEAKLEY—Running the best we can.

MR. BROWNE—You will continue to run them the best you can.

MR. BULGER—Will the gentleman permit an interruption?

MR. BROWNE—If it is not to be taken out of my time.

MR. BULGER—Will the gentleman consent to this amendment to the section?

MR. BROWNE—No, sir; I will not be interrupted with that. I don't think it is fair to the Convention or the Committee for me to be offering other people's amendments. I am one of those who want to get through as soon as we can and take my seat.

MR. O'NEAL—Will the gentleman yield to me for a question?

MR. BROWNE—Yes, sir.

MR. O'NEAL—Does the gentleman say the adoption of this provision with reference to local taxation will lessen the fund in the poorer counties?

MR. BROWNE—Not at all.

MR. O'NEAL—That is under the general State tax the poorer counties would receive more from the general tax than from the local?

MR. BROWNE—Not at all. I think I can explain the matter so these gentleman can understand it if they will listen. This provision has no effect upon the present system of public schools or the appropriations therefor.

MR. LONG (Walker)—Will the gentleman permit an interruption?

MR. BROWNE—Yes.

MR. LONG (Walker)—Did I understand the gentleman to be opposed to the amendment of the gentleman from Jefferson and in favor of the majority property vote.

MR. BROWNE—I said something upon that yesterday and after awhile will come back to it.

MR. LONG (Walker)—I want to know if the gentleman takes that position?

MR. BROWNE—Mr. President, I shall have to decline to allow this continual interruption. I do not care personally. I could stand here and answer these questions all day, but I want to get through.

MR. LONG—Will the gentleman permit me a question?

MR. BROWNE—I understand the question and will answer it presently.

MR. LONG (Walker)—I object to the gentleman understanding my question before I put it.

MR. BROWNE—Ask the question and I will answer it.

MR. LONG—Suppose one voter in a beat owned a majority of all the taxable property in that beat. Does the gentleman contend that that one voter should offset all the other voters in the beat?

MR. BROWNE—If the gentleman had been in his seat yesterday and had been listening to what I had to say, he would not have had to ask that because I stated, as far as I was individually concerned and my county, I would cheerfully leave that question to be determined by a bare majority of the qualified electors.

MR. LONG—May I ask another question?

MR. BROWNE—No sir, I decline to yield. I have not answered that question yet. There are different conditions in different counties in the State that made it necessary to put some safeguard against the non-tax-paying electors carrying this tax over the heads of the property holders. When the gentleman offered it I said I was willing to it for my county, but I am not one of those who look at everything from a selfish standpoint—,

MR. WADDELL—I rise to a point of order. The gentleman is out of order, he has spoken over ten minutes.

MR. BROWNE—I make the point of order that the rule does not apply to a Chairman of a Committee.

THE PRESIDENT PRO TEM (Mr. Proctor) — In the opinion of the Chair the gentleman has thirty minutes.

MR. LOMAX—I rise to a question of parliamentary inquiry. As I understand the rule the ten minutes only applies to discussion on amendments proposed and does not a Chairman have thirty minutes notwithstanding that rule?

THE PRESIDENT PRO TEM—The gentleman has thirty minutes.

MR. BROWNE—I was saying I was not one of those who look at everything from a selfish standpoint. I am very much in favor of local taxation for schools, but I am in favor of adopting some provision looking to that end in our Constitution that will work to the best interest of every county and every community in the State of Alabama.

When the gentleman from Jefferson offered his amendment I stated I thought probably it would be a good plan to have the tax provision to allow every tax payer to vote and to allow a two-thirds majority. However, the objection to the Louisiana plan is that one means dollars counted against cents. I will say for one that I am not afraid of the people upon the Louisiana plan. I do not believe you can go before any of your Hill Billy audiences and explain that matter to them but what they will agree with you. I am not afraid to stand here and say that when the question of voting voluntary taxes for any particular object is before our people, the property holders ought to have the biggest say as to whether that tax shall be levied, and I do not believe the Hill Billies will agree with the gentlemen who take the other view of the question.

MR. WHITE—Is the gentleman entirely acquainted with the views of that class of our fellow citizens?

MR. BROWNE—I am pretty familiar with them. I have been elected by them half a dozen times.

MR. LONG (Walker)—Does the gentleman take the position that no Hill Billy in Alabama pays any taxes?

MR. BROWNE—I do not. I was going to say that when you get among them you will find that most of them pay taxes on a gun or a pistol, or something of that sort.

MR. HEFLIN (Chambers)—Can the gentleman explain the difference between a Hill Billy and a Black Belt Democrat?

MR. BROWNE—No, sir; I cannot see the difference.

MR. O'NEAL—Will the gentleman permit me a question?

MR. CUNNINGHAM—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order?

MR. CUNNINGHAM—I make the point of order that the word "Hill Billy" has no place in the nomenclature of this State or of any political subdivision thereof, that it is not parliamentary language, and is out of place in this Convention.

THE PRESIDENT—The point of order is sustained.

MR. BROWNE—In reply to that point of order, I think it would have been well if it had been made when the "hill billy" first made his appearance on this floor, by introduction of the gentleman from Walker.

MR. HEFLIN (Randolph)—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. HEFLIN (Randolph)—There is so much disorder that the gentleman from Talladega cannot proceed and we cannot hear.

MR. REYNOLDS (Chilton)—I desire to ask a question. Who would vote the property held by a partnership, or by a corporation.

MR. BROWNE—No corporation would be allowed to vote.

MR. REYNOLDS (Chilton)—But I say who would vote the property of a partnership?

MR. BROWNE—No one would, unless it was taxed separately. A partnership cannot vote.

MR. REYNOLDS (Chilton)—If there were three men in the partnership, worth ten thousand dollars, and two of them favored that tax, and one was opposed to it, who would vote at the election?

MR. BROWNE—It would not be assessed to either one. If it was assessed to the partnership, and the taxes were paid by the partnership, a partnership would not have any voice in the matter, nor would a corporation.

I want to say, and I hope gentlemen will respect my request, that I do not desire to be interrupted any more, because one gentleman gets up and asks a question, and before I finish one sentence another gentleman gets up and interrupts me.

Now, about the cities and towns, if this section becomes a law, and the tax is levied, it is with the Commissioners' Court how they will appropriate, or apportion it among the different schools. Some cities may be so selfish that they would desire to get back all of the taxes they pay; other cities might be liberal enough to be willing to pay their part of that ten cents on the hundred dollar tax and leave the money to be equitably apportioned among the schools in the county by the Commissioners' Court. No one, it seems to me, would be so selfish as to desire that any city should get all of its tax back, and not divide it with the country precincts, upon which the city relies for its support. If the county should see fit not to collect their ten cents of that tax, then the city could levy that ten cents on the hundred dollars; or if any county took only five cents, why the city could take the other five.

Now we deal with that as only ten cents upon the hundred dollars, but gentlemen forget the restraining influence upon the future Legislatures of Alabama that this section will have. Gentlemen will not be so anxious to appropriate sums of money in the future as they have been in the past, when they know that by not levying the full amount of the sixty-five cent limit that they will thereby allow their counties to get more than the ten cents on

the hundred dollars. In other words if in three or four years, the Legislature should see that they can pay the expenses of the State Government, economically administered, by levying a tax of only sixty cents on the hundred dollars, then the county can get fifteen cents on the hundred dollars for her public schools if the county wants it. If not, the county is not forced to take it, and before it can be taken, it must be voted for, under the provisions of this ordinance, as reported, by a majority in number and in the value of the taxable property.

For one, I am willing to accept the amendment offered by the gentleman from Jefferson. I favor it for my county, but when gentlemen tell me of conditions in their counties, I do not care to force a provision upon their counties, against their will, that would tend to confiscate their property to some extent. I am told that under the most rigid suffrage law that can be enacted, that in some counties there will still be almost a majority of colored voters who are non-tax payers. That certainly, with a large majority of the colored non-tax paying voters of the county, and the very small minority of possibly non-tax paying white men, a tax could be voted upon the property of that county, against the will of the property tax payers, and I am opposed to any law that would allow such a proceeding as that.

Now, I am told that in Texas that the result of the two-thirds law is similar to that in Louisiana; that when you have gotten a two-thirds majority of all of the qualified electors who are tax payers, that in almost every instance you have a majority of the taxable values of the county. For one, I propose to vote upon this subject in the interest of the public schools of Alabama without any thought as to what effect such vote will have in the future, and without considering whether or not a small class of non-tax paying voters will object to it. The question is, how can we best help the public schools of Alabama and keep faith with the people, whose representatives we are? It seems to me that the only possible way is by permitting counties to levy a special tax for schools, within the present constitutional limit, not the one we fixed on yesterday, but the one in the old Constitution, of seven-fifty cents for State and fifty cents for county purposes. I have nothing more to say, Mr. President.

MR. MERRILL—I desire to offer a substitute.

The substitute was read as follows:

Substitute for the amendment to Section 5 of the Article on Taxation; in line sixteen, after the word "by" insert the letter "a," and after the word majority, insert "of two-thirds," and strike out of lines sixteen and seventeen the words "in number and in value of taxable property."

MR. MERRILL—I agree with the gentleman from Jefferson that no question of dollars ought to enter into an election. I do not think that a man with a dollar ought to have any more power at the ballot box than the man without the dollar, but when we transfer this remarkable power of levying a tax to the people of a county, I think that it ought to be guarded in a conservative way, and that not only a majority, but more than a majority ought to be required to put the tax upon the property owners of the county.

Now, I am in favor of this local tax for educational purposes, and my action in regard to the limit that I voted in the tax rate on yesterday, was controlled very largely by my desire that this local tax should be vested in the counties. Under the Democratic platform, as I construe it, we were limited not to go above 75 cents, and if we had placed the limit at 75 cents, then, Mr. President, we would not have been able to pass this section of the ordinance, which confers upon counties the right to levy this local tax for educational purposes, because with a 75-cent limit and a constitutional right conferred upon counties to vote this local taxation for educational purposes, we would have exceeded the power and the right conferred upon us in the Democratic platform.

Now, it is my opinion—of course, it is not worth much, but it is the thing upon which I am acting—that when we put it above a majority, then we protect to a very large extent the property owners, and if we put it at two-thirds, I believe that a majority of the property owners in the county will have voted for it before it is carried, and, therefore, are willing to put the tax upon themselves. I think that this is a conservative amendment and ought to be adopted by this Convention.

MR. WILLIAMS (Barbour)—As I understand the immediate issue, it is confined to one single proposition, and I do not propose to weary the gentlemen but a very few minutes. The immediate question is whether the tax raised by the counties is to be voted by a majority or two-thirds of the county, or voted simply by those who contribute the money. That is the issue as raised by the amendment of the gentleman from Jefferson. Again, so that I can understand it clearly myself, the question is whether this taxation, which is to be raised by an election in the different counties, is to be voted by the counties at large, or whether it is to be voted by those who have it to pay.

Well, it seems to me, Mr. President, that we need not go far for a solution of this question. It is in the nature of a contribution to the public schools by those who are able to contribute, and to hold that a contribution, or anything in the form of a contribution, shall be required by the vote against those who pay nothing, and who do nothing except to vote against those who have the property out of which to furnish a little money,

would be a strange thing to do. Inasmuch as a sort of new era is upon us, by which counties are, under proper proceedings, to hold elections for the purpose of taxing the people for their contributions to the schools. I think it is wrong to subject those who have to pay the money to the will of those who have no money to pay and who do not pay any money. It seems to me it would be in the nature of taking a man's property without just provision of law. Look at it as you are situated in your own county. I do not care whether the property holders have a majority or not, in many of the counties they are not in the majority. This is a proposition to hold an election for the purpose of advancing additional support to the public schools, supplementing the State fund, and strengthening the schools of the county. As a matter of course, every man who has got a house full of children, and no money to pay for their tuition, would be in favor of taxing his neighbor to the full extent. The committee seems to think it wise to limit the taxing power to those who have the tax to pay. It is well enough for us not to forget that under the present school system, everybody is paying for schooling everybody else's children, and here is an additional and supplementary proposition to pay for everybody else's children but his own. I repeat that I do not care how the majority may stand in a county, but I repeat further that I do not believe that men ought to have the casting vote upon that question who have to pay the means by which the schools are to be carried on.

Now you turn the man who has some little ability to give this contribution to the schools into the power and control of men who have no means to contribute to the schools, even if they desired to do so, and have no means to aid in the enlargement of this fund, and let them vote this charge upon the property of the taxpayers, you thereby add to the burdens those property-holders have already borne, which are chiefly the burden of the administration of the government of the State.

MR. LONG (Walker)—May I ask the gentleman a question?

MR. WILLIAMS (Barbour)—Certainly; but I don't know whether I can answer him.

MR. LONG (Walker)—Suppose a member of the legislature is a non-property owner, would he not have the right to vote on any question relating to taxation in this State?

MR. WILLIAMS (Barbour)—To taxation generally, as a matter of course, but that means general taxation for the purpose of carrying out the legislation of the State, but the gentleman must not forget that this is a special tax to be laid by a vote of the people of the County, for the purpose of raising a special fund to educate the children of that County, and it comes in the nature of a special tax.



MR. LONG (Walker)—Suppose there was a special tax for the State. They levy a special tax of one mill in this State for the Confederate soldiers. Would not the poor man be allowed to vote on that question in the legislature?

MR. WILLIAMS (Barbour)—That is general legislation. The question is in a nut shell. Mr. President, and that is why I desire to be understood as speaking on the single proposition, and not long on that, and the issue comes right square down to all of us. Here is a proposition in any county you may name, to raise an additional tax out of the people of that county, for the purpose of supplementing the general fund in that county. There are people in that county who could do nothing towards it, however much they desired to do so. There are others who can. Now, who shall have the privilege of determining when, where and how much of the means of the taxpayers of the County shall be appropriated to the object of schooling?

MR. WHITE—Will the gentleman allow a question?

MR. WILLIAMS (Barbour)—Yes.

MR. WHITE—Then if the property owner ought to be allowed to vote, what about females that own property?

MR. WILLIAMS (Barbour)—I have got nothing to say about women voting, whether they own property or not. I am against their voting to the end.

It is a common saying that those who are able to pay taxes, must come up to the command of those who are not able to pay taxes, and pay in their funds to educate the children. You property owners that pay the taxes of the State, we who do not pay the taxes of the State for the schools or anything else, we say to you, you must march up like good fellows to the ring here, and submit your fund to this general fund for the county for the education of our children, and we will reap the benefit of it.

MR. BULGER—May I ask the gentleman a question?

THE PRESIDENT PRO TEM—Does the gentleman permit an interruption?

MR. WILLIAMS (Barbour)—Yes, the gentleman may ask any question he pleases. I do not pledge you I will answer it.

MR. BULGER—Do you not think it would be wise to postpone the further consideration of this section until the Committee on Education reports a like section on this subject?

MR. WILLIAMS (Barbour)—Yes, I think so. If the gentleman will make such a motion, I will vote with him, but just now the matter of inquiry is as to what this Convention will determine upon the question.

MR. BULGER—I will ask the gentleman another question. Will you not make the motion, or yield to me to make it?

MR. WILLIAMS (Barbour)—I will yield to you to make the motion.

MR. LOMAX—Wait until he gets through.

MR. BULGER—Then I move that this section—

THE PRESIDENT PRO TEM—Does the gentleman from Barbour yield?

MR. WILLIAMS (Barbour)—I do.

MR. BULGER—Then I move that this part of the section referring to local taxes, be recommitted to the Committee on Taxation, until the Committee on Education reports a like section.

MR. O'NEAL (Lauderdale)—To be considered at the same time?

MR. HEFLIN (Chambers)—Before the gentleman takes his seat—

MR. O'NEAL (Lauderdale)—To be considered at the same time as the report of the Committee on Taxation?

MR. BULGER—To be considered at the same time the same kind of a section is considered in the report of the Committee on Education.

THE PRESIDENT PRO TEM.—The gentleman from Talladega moves that this Section 5, together with the amendment, be referred back to the Committee, to be considered at the same time a like section is considered from the Committee on Education.

MR. BROWNE—Mr. President, as Chairman of the Committee I will state that we have given this thing our most careful consideration, and that there is no necessity to send it back to the Committee. It will be reported just exactly as it is now, and I do not see why a matter of taxes should be left and held here until the Committee on Education reports. Certainly the Committee on Education can report no tax article. I therefore move to lay the motion of the gentleman on the table.

MR. ASHCRAFT—I think the Chair has misunderstood the effect of the motion.

MR. BULGER—My motion only includes that part of Section 5 which relates to special taxes for school purposes.

MR. HEFLIN (Chambers)—If I understand him, Mr. President, the gentleman from Tallapoosa moved to strike from the middle of the twelfth line of Section 5 where it reads "provided further" to the remainder of the Section, as I understood it.

MR. BULGER—That is right.

MR. HARRISON—I call attention to the rule of the House which requires these motions to be made in writing, and that it is therefore out of order.

THE PRESIDENT PRO TEM—The present occupant of the Chair is not aware of the rule.

MR. LOMAX—I submit that the rule does not apply to a motion to postpone or refer, but it applies to an amendment.

THE PRESIDENT PRO TEM—The Chair is of the opinion that it does not apply to a motion of this character.

MR. HARRISON—It ought to be written out. There was a difference between gentlemen as to what the motion was.

THE PRESIDENT PRO TEM—The gentleman from Tallapoosa moves to recommit all of Section 5, beginning with the word "provided," in the twelfth line, will the gentleman put his motion in writing?

MR. REESE—I make the point of order that this House cannot consider a motion that is not in writing, and it has universally been ruled that this Convention—

MR. JENKINS—I offer a substitute to the motion of the gentleman from Tallapoosa.

THE PRESIDENT PRO TEM—The Chair would hold that a substitute is not in order at this time.

MR. WILLIAMS (Barbour)—I yielded to nobody but the gentleman from Tallapoosa to make a motion. I am holding the floor.

MR. REESE—A point of order. There can be no proposition before this Convention of the character made by the gentleman from Tallapoosa unless it is in writing; therefore there is no proposition before this House and the amendment by the gentleman from Wilcox is out of order.

MR. O'NEAL (Lauderdale)—Will the gentleman allow a question?

MR. HEFLIN (Randolph)—I make the further point of order that the gentleman from Barbour has the floor, and yielded only to the gentleman from Tallapoosa.

THE PRESIDENT PRO TEM—All motions of that character the Chair would hold should be in writing. As the motion of the gentleman from Tallapoosa was not in writing, the chair will hold it was out of order, and the gentleman from Barbour has the floor.

MR. WILLIAMS (Barbour)—I will not trouble the Convention but a minute or two longer—

MR. OATES—If the delegate from Barbour will allow me, I hear much difference of opinion expressed, and I would ask him on this point, it seems that the proposition of the Committee was that only tax payers should be allowed to vote in the proportion to the amount of taxes paid.

MR. GILMORE—I make a point of order.

THE PRESIDENT—Will the gentleman from Montgomery suspend? The gentleman will state the point of order.

MR. GILMORE — The gentleman from Barbour has consumed his time.

MR. LOWE (Jefferson)—I move that the time of the gentleman from Barbour be extended five minutes.

THE PRESIDENT PRO TEM—The Chair holds that the Chair shows that the gentleman from Barbour had two minutes left when he yielded to the gentleman from Tallapoosa.

MR. LOWE (Jefferson)—I move that the time of the gentleman from Barbour be extended five minutes.

THE PRESIDENT PRO TEM—The Chair holds that the gentleman's time has not expired, that that he has two minutes.

MR. BROWNE—I make the point of order that the gentleman from Barbour cannot yield for the purpose of introducing a motion by the gentleman from Tallapoosa without allowing a motion to be made to lay that motion on the table.

THE PRESIDENT PRO TEM—The gentleman from Barbour yielded to the gentleman from Tallapoosa, and the gentleman from Tallapoosa offered a motion, which was ruled out of order; then the Chair held that the gentleman from Barbour had the floor.

MR. HEFLIN (Chambers)—I rise to a point of order, that the motion made by the gentleman from Jefferson, as I understood it, to extend the time of the gentleman from Barbour five minutes, under the rules of this House, this Convention stands adjourned at 1 o'clock, and it is now, I understand, about three or four minutes to 1, and unless the rules are suspended we could not go beyond 1 o'clock—

THE PRESIDENT PRO TEM—The Chair will entertain the motion of the gentleman from Jefferson. The Chair was laboring under the impression that the gentleman from Jefferson did not know that the time of the gentleman from Barbour had not expired. It is now moved by the gentleman from Jefferson that the gentleman's time be extended five minutes.

During the stating of the question and the taking of the vote, Mr. Reese (Dallas), and Mr. Pettus (Limestone), sought to secure recognition upon a point of order, but failed.

And upon the vote being taken, the time of the gentleman from Barbour was declared to be extended for five minutes.

MR. REESE—I rise to a parliamentary inquiry.

THE PRESIDENT PRO TEM—The gentleman will state the inquiry.

MR. REESE—How can that time be extended without a suspension of the rules?

MR. HEFLIN (Chambers)—That is the point of order I wanted to make.

THE PRESIDENT PRO TEM—The Chair understood that was the motion made by the gentleman from Jefferson.

MR. REESE—The motion made by the gentleman from Jefferson— —

MR. LOWE (Jefferson)—The time of the gentleman from Barbour has been extended and the gentleman from Barbour has the floor.

MR. HEFLIN (Chambers)—I made the point of order that unless the rules are suspended——

THE PRESIDENT PRO TEM—The gentleman from Jefferson, as the Chair understood it, made a motion to suspend the rules, and that the time of the gentleman from Barbour be extended five minutes, and that was put to the house and the Chair decided that the motion was carried, and the gentleman's time is extended.

MR. HEFLIN (Chambers)—The point of order is that the Convention did not understand it that way.

The President here resumed the Chair.

THE PRESIDENT—The gentleman is out of order.

MR. BULGER—May I ask the gentleman from Barbour a question?

THE PRESIDENT—Does the gentleman consent to be interrupted?

MR. WILLIAMS (Barbour)—Well, I am embarrassed, Mr. President, I told the gentleman once that I would if he would make such a motion, and that I would vote for it.

THE PRESIDENT—Does the gentleman consent to be interrupted by the gentleman from Tallapoosa?

MR. WILLIAMS (Barbour)—Wait a moment. He was ruled out of order because he did not have his motion in writing. Since that time he began to write his motion and this humble individual proceeded. I found so many gentlemen around me opposed—

THE PRESIDENT—Does the gentleman consent to have the inquiry submitted from the gentleman from Tallapoosa?

MR. WILLIAMS (Barbour)—I was just going to state that I would answer my friend's request in the negative. That I could not consent now to yield for the motion to be made. If it is simply a question that I am able to answer, I will do it with pleasure.

MR. BULGER—The question I desire to ask the gentleman from Barbour is would he yield to me to submit my motion to the Convention in writing?

MR. WILLIAMS (Barbour)—No sir, I cannot now yield.

The clock struck one o'clock.

MR. HEFLIN (Chambers)—A point of order.

THE PRESIDENT—The gentleman from Barbour has the floor. The hour for adjournment has arrived and the Convention will stand adjourned until half past 3 o'clock this afternoon.

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#### AFTERNOON SESSION.

The Convention was called to order by the President and a call of the roll showed the presence of 117 delegates.

THE PRESIDENT—The pending question before the Convention is Section 5, as reported by the Committee on Taxation. To that has been offered an amendment by the gentleman from Jefferson and an amendment has been offered to that amendment by the gentleman from Barbour.

The chair recognizes the gentleman from Randolph.

MR. HEFLIN (Randolph)—Mr. President and gentlemen of the convention, it is not my purpose to consume much of the time of the Convention. I simply rise to enter my solemn protest against the passage of Section 5, as reported by the Committee on Taxation, and to suggest a few words in support of the amendment offered by the gentleman from Jefferson.

It is supposed that this section is offered in the interest of education. I have always been a friend to the common schools of the country, a friend of education, as my record in the past has demonstrated. I have always willingly and gladly voted for an

to the extent of preventing the Legislature from appropriating where there is a surplus accumulated by a greater income than the amount of expenditures. The limitation is to keep the Legislature from making appropriations beyond and above the income. You won't have any surplus at all unless the income is more than the outgo; and if it is more there is no limitation upon it. If it is more where is any language that prevents the Legislature from appropriating it and using it, just so they do not exceed the amount of the income. That is the limitation that this section puts upon it.

MR. HOOD—If they appropriated an amount that exceeded the estimated income, would the appropriation be void?

MR. OATES—Now you have propounded to me a question for the court to decide. That would present a question of entirely a judicial character and I cannot say whether it would be void or not.

MR. HOOD—Wouldn't it be discretionary with the Legislature—wouldn't it be left to the discretion of the Legislature.

MR. OATES—That presents, as I say a judicial question. Now if the appropriations were to exceed, actually exceed the estimate of the income?

MR. HOOD—Yes sir.

MR. OATES—Then suppose the income exceeded the estimate? Is there any limitation or restriction upon the Legislature in appropriating that? So they do not go beyond the income—

MR. HOOD—It reads "the aggregate appropriations made shall not exceed in amount the income from the revenues of the State for the current fiscal year."

MR. OATES—That is not the section now, a substitute was adopted.

MR. O'NEAL (Lauderdale)—What was the substitute?

MR. OATES—To be estimated for each year.

(Mr. Knox here resumed the chair.)

MR. SAMFORD (Pike) — I will ask the gentleman from Montgomery if the Legislature is to be governed by the estimate made by these officers with reference to the revenues to be derived from taxation and other sources, if that would not place the appropriations by the Legislature absolutely in the hands of the party who makes the estimate?

MR. OATES—Not at all. It seems that certain delegates, I don't mean the delegate from Pike, but there seems to be such a wide apprehension in the minds of a good many of the delegates.

ured by that standad. It is wrong; it is class legislation, and if we pass it, the people will rise up and curse us.

Who is the man on this floor who had that in his platform when he went before his people for election? Not one, and I dare say, there is not a man on this floor who, if he had argued for such a provision, could have been elected constable in his beat.

Now, Mr. President, who does this discriminate against? Paupers, serfs, a low grade of people? Not at all; but against the best class of people on God's green earth, that band of men who followed Lee and Stonewall Jackson, who responded to the call of their State when the tocsin of war was sounded, and who rallied to the tune of Dixie under the bonnie blue flag, and went forward to meet fourfold their number in the death struggle of war. Shall we say by our votes that that class of men, that bank of patriots shall be disfranchised? No, forever no. We will ever keep green in the garden of memory their heroic achievements and deeds of valor done on field of battle. It will ever remain with us as pleasant recollections of a dark and bloody war and float down the silent stream of memory while life shall last. We say to them and to those who have crossed over the river, "We remember you, you need no marble shaft, molten brass nor monumental granite to perpetuate your deeds of valor on field of battle but your names, like the untitled stars of heaven shall shine forever." Those soldiers were as patriotic as Washington or Jefferson and as brave as the defenders of the Alamo or of Thermopylae.

Mr. President, this is a dangerous provision. It is a departure from beaten paths. It is striking at the old landmarks. We are drifting in the wrong direction and if we pursue this course, ere long we will have trouble, turmoil and strife. We should profit by the history of the past.

Ill fares the land to hastening ills a prey  
Where wealth accumulates and men decay,  
For an honest yeomanry, a country's pride,  
When once destroyed can never be supplied.

Mr. President, we should keep our word with the people. I am one of those servants of the people who believe we should be true and that platforms were not made to get in on, but to stand on after we have gotten in; and we should be sincere and not deceive the people. If we deceive the people you can rest assured that this will be the last opportunity we have of doing so.

Oh, worker, whatever your fortunes  
Wherever your lot be cast,  
Look first that your efforts be honest  
And men will accept you at last.



The world may be heartless and stupid  
And its judgment is often severe.  
But sooner or later its favor  
Go out to him who's sincere.

Mr. President, the best citizenship of the State of Alabama, or some of the best, is represented by that class known as poor people, the poverty-stricken people, the common people, the yeomanry of the country, the best people on God's green earth. Some writer has said they are the best people of earth and that the Lord demonstrated that fact by having made more common people than of any other class, and I believe it.

Mr. President, in this country of our's the poor boy, the son of the pauper, has an equal showing with the son of the millionaire. Here is this Southern clime, in the land of Dixie, in this home of patriotism, virtue walks hand in hand with justice, bravery, truth and religion and here in America today where the tree of liberty dies not and heroic sentiment lives forever, the magnificent temple of justice, the Goddess of Liberty stands out in all its august and radiant beauty and throws its rays on every nation of the earth, inspiring each and every one of them to loftier patriotism.

Now, Mr. President, in considering this question I ask every man to put his hand on his heart and to do what is right and see if his people, when he goes home, if he has acted conscientiously will not praise him. But if he has been untrue, if he has betrayed that trust they will curse him and the next time he offers for office he will not be in the fight at all. The history of the world has been that when a nation or a monarchy has drifted along this channel—

THE PRESIDENT—The time of the gentleman has expired.

MR. FOSTER—I move that the gentleman's time be extended.

MR. HARRISON—I move that the gentleman have leave to print.

MR. HEFLIN (Randolph)—Shall I proceed? (Laughter.)

MR. O'NEAL—I move that the rules be suspended and that the gentleman's time be extended five minutes.

A vote being taken the motion was carried.

MR. HEFLIN (Randolph)—I am very much obliged to the Convention for extending this courtesy to me. This is the first time I have attempted to make a speech and I promise the Convention not to trouble it much hereafter.

As I was going to say, we should be governed by the history of the past. Take the centuries that have gone and see what was the result in nation or monarchy that has divided its people into classes. Rome tried class legislation and divided her people into patricians and plebeans and she fell down among her beautiful hills and died. England tried it and bleeding Ireland tells the tale. France tried it and there was the French revolution with the history of which you are all familiar. And I believe even in this liberty loving land of ours, if we persist in this course, ere long trouble and strife and turmoil will come and ruin will stare us in the face.

Another thing in regard to the platform. I appear here today as the representative of the people, the common people and I say we should keep our pledges to that class of people. If we do not, we shall never have the opportunity to keep a pledge hereafter. I say to you now unless we do, our days are numbered and soon the places that now know us will know us no more forever. If you are not true to the people, not only will you never be a delegate to a Constitutional Convention again, but you will never have the enjoyment of occupying any other office while you live, because no people will ever put faith in a man who has once been untrue to a trust reposed in him. And in connection with that I am reminded of a piece I read in the newspaper several years ago on the state of man. It reads after this manner:

Man that is born of a woman is as small potatoes and few in a hill. In infancy he is full of colic and catnip tea. In old age he is full of cuss words and rheumatism. In his youth his mother draweth him across her knee and sweeteneth his life with a slipper. When he is a man grown up the Sheriff pursueth him all the days of his life. He getteth into office. His friends cling to him like spring flies to a sugar barrel. He swelleth with vanity and cutteth ice for a time but is hewn down at the next Convention, cast in the salt box and his name is Dennis. Out of office he soon goeth busted and lieth down in the cow pastures beside the still waters of brook. He dieth out of the world and goeth where it is warm enough without clothes. The last end of that man is worse than the beginning.

Take care that that is not the future of some of us.

Mr. President, I ask you and each of you to consider this question. Take it up link by link, thread by thread, explore it in all its bearings, do your duty and when you leave these sacred halls whether you shall be successful hereafter politically or not, you can feel the sweet consciousness of having discharged your duty, of having kept the Democratic platform, of having been true to the pledge made to the white people during the campaign, and then when you start on your journey to the other world, when you come to that river that marks the unknown shore, like the dying

swan with its latest breath you can chant the sweetest strains and sing yourself to death.

Mr. Long obtained recognition and asked for the reading of the section and all amendments, which was had.

MR. LONG (Walker)--Mr. President, I am heartily in favor of the amendment offered by the gentleman from Jefferson. This is a democratic government under a republican form of government. There can be no more reason given here why members upon this floor should vote to exclude electors of the State of Alabama who are not property owners than that they should vote that no man who does not own property in Alabama should be allowed to hold office. The very question is repulsive to every idea of a republican form of government. A man in a beat might have \$200,000 worth of property and all the other men in the beat might not have one thousand and that man would then control the beat upon this proposition. If that is right God made a mistake when he admitted Lazarus into the Kingdom of Heaven and refused admittance to Dives. If that proposition is right, every form of American government is wrong and Thomas Jefferson and all the others did wrong when they allowed men and not property to vote in the United States. Now, Mr. President, this is a serious question for us to consider. I do not believe it is necessary to speak upon this question because I have confidence in the members upon this floor, and I do not believe there are a dozen men on this floor who favor this proposition. If any excuse could be offered for it in this black belt, the majority report of the Committee on Suffrage will eliminate that excuse. There can be no excuse for it in the mountains because the people don't want it and there cannot be a good reason given why it should be granted. If Christ himself were here he could not vote under that proposition and neither could his disciples. There are not half a dozen ministers of the Gospel in the State of Alabama who could vote if this section is adopted, no matter how intelligent or good they are. If you deny them the right to vote on a little pittance of one-tenth of one per cent. tax for the benefit exclusively of the public schools you had as well deny them every other right of suffrage and you had as well deny them the right to hold office. Why, there cannot be a single sound reason given why this should be in the Constitution of the State of Alabama. You put it there and I tell you the people of Alabama will not support such a radical piece of legislation in the fundamental laws of our State and this Constitution will go under by fifty thousand majority.

The poor people in Alabama made as good soldiers as the rich in the last war and many a man today sleeps under the sod, who never owned a slave but was fighting for slavery. Many of those who were formerly overseers own plantations now in Alabama. And I want to deny the assertion that has been made here

that property pays the tax. A man in London may own farming lands in Alabama, but he does not pay one cent of the taxes. It is the tenant on the farm that pays those taxes; it is his labor that pays the taxes and produced all the wealth in Alabama, and everywhere else. A man, no matter how poor he is, has certain inalienable rights guaranteed to him by the Federal Constitution. You talk about the suffrage plank being against the Federal Constitution; you put this provision in the Constitution, and if the question were contested, I believe it would be the duty of Congress to say to the people of Alabama, you have not a republican form of government, because you deny to the poor people a right to vote; you allow property, instead of votes, to control your political destinies. Mr. President, I do not desire to say anything further on a proposition so absurd on its face. I do not believe there are a dozen members on the floor that are in accord with the report of the committee.

MR. REYNOLDS (Chilton)—I dislike to take up the time of the Convention in discussing this question, but I feel that I would be untrue to the people I represent did I not say a few words on this subject. This is a remarkable proposition and something new in the history of the country, that property, and not men, should vote.

I take this view of the question that the Convention should not, and ought not, to put anything in the Constitution that is not needed, that is not right and just and demanded by the people.

Mr. President, we have lowered the tax limit with the idea that we would give to the people of the State the right of local self-taxation for public schools. I submit that there is no one on the floor can gainsay that. We have reduced our tax rate, guaranteeing they would give to the people locally the right to levy the amount that the tax was reduced. But this provision is so worded that it is inoperative, and the people cannot enforce it. I lay down the broad proposition that there is not a county in Alabama that can levy a school tax under this provision. If this proposition is right and just, why not put it so the people can enforce it? I say, if it is wrong, this Convention should not be put in our organic law; if it is right, it should be put in a shape that it can be enforced.

Who pays the taxes in the country? Go down these streets and you find tenants in houses paying rent. They are the ones who own the property, figures the taxes and includes it in the amount for which he rents. And will we say that the man who is poor shall not vote? I believe levying taxes upon property for the benefit of education is for the benefit of the property itself. I represent the hill billies—but I believe that has been ruled out—so I represent a poor agricultural people. In my county we have this law. It is inoperative because the officers don't put it into

operation. In my county, in the remote country districts, wherever we have good school houses and good schools, valuations are higher than in districts where we have no school houses and churches. Then, to levy school taxes and build up common schools in the country, increases the value of the property, and why not let the property bear its share of taxation to build up the schools? You educate people in the country and you elevate them and make them ride more on the railroads and the railroads ought to be made to pay their share of taxation, because they get the benefit when you elevate the people. This Convention ought to be the last body of men who would for a moment consider any proposition to tear down the school houses of the State. Why? Because we have before us now a problem as to what to do with the ignorant white man in Alabama. That is a great problem before the Convention. And should we put down in the organic law of the State for all time to come such a proposition as it embodied in this section? This ought to be the last body of men in the world to strike down the common schools of the country when it is said in the future only the educated can be allowed to vote. So I ask the delegates to pause and consider the great undertaking upon which they are entering before they put this proposition into the organic law for all time.

Who have fought the great battles of the country? When our country calls for warriors, men to go out and fight the battles, does she call for the property owners of the country? No, they are the biggest cowards that ever lived in the country. Wealth is always cowardly, and the poor people are those who fight the battles.

Now I want to say to this Convention that I never cast my vote for any special privilege for benefits of education to any class of people or against any class. I do not believe because men are rich or because corporations are wealthy that they ought to be oppressed by law. I believe the laws on the statute books should bear equally on all classes alike. I do not believe in any special laws or special licenses or license taxes that are now on our books. Always in the Legislature I have voted against them. Some gentlemen I believe referring to some tax said the poor people would not have much to pay of it, that it would all fall on the rich people and possibly so heavily that they could not pay it. That would not be right. It is the duty of this Convention not to allow anything become part of our law that permits one class to bear heavily on another class. I think the laws should be made just and equitable and nothing that operates harshly on any portion of our citizenship should be tolerated.

If this measure is just, Mr. President, let us put it on the statute books, but if it is just that the men of Alabama should rule upon this question let that be the provision.

Where is the man who went before the people of Alabama and advocated such a thing as this? Some of the most fluent speakers of the State made speeches in my county and territory, and they said there will be no white man disfranchised, not a single individual. They promised my people if a single white man was discriminated against except on account of crime, they would come back and make speeches against the ratification of the Constitution, and if you put this provision that is reported by the Committee into this instrument, I serve notice now that we shall hold those gentlemen to their promises and demand that they come back to my county and oppose the adoption of this Constitution. This is the most important matter that has come before the Convention since it has been in session. Yesterday we were on another important matter, and I cast my vote against the reduction of the tax rate. I believe that the Legislature has appropriated a great deal of money that it should not have appropriated, but I was afraid if you lowered the tax limit the next thing would be a blow at the common schools and I cast that ballot against what I thought a majority of my people would do, but I believe I did it believing I was doing my duty towards the poor boys and girls of Alabama. I will not say barefooted boys, because I believe another member has copyrighted that. I hope the amendment of the delegate from Jefferson will pass, and I am opposed to the substitute of the gentleman from Lowndes. I believe in a majority rule. I believe when one man goes up to the polls and casts his ballot that ballot should count as much as the ballot of any other man. I do not believe that men should be measured by their wealth. We will drift into that sooner or later, but let us not hurry into it. I do not think the people of Alabama are ready for this system and I think they will rise up and repudiate it.

The Chair recognized the delegate from Tallapoosa (Mr. Bulger) who yielded to the delegate from Barbour (Mr. Merrill.)

MR. MERRILL—I ask unanimous consent to be allowed to correct my amendment. I want to strike out five words in the fifteenth line. It was my intention to strike out entirely the property holders. My amendment is to strike out the words "property tax payers who are." I ask unanimous consent that this may be done.

THE PRESIDENT—The gentleman desires unanimous consent to correct the amendment which he has offered.

MR. MERRILL—That leaves it to the qualified electors without reference to any property qualifications.

The consent was given and the amendment corrected as indicated.

MR. BULGER—One of the most prominent pledges made to the people of Alabama when this Convention was called was

that we should take no backward step in education. On that pledge we went to the people on the question of Convention or no Convention, and a majority of the people voted for the Convention. Now the people of Alabama have a right to expect that this Convention will adhere to its pledge. In the wisdom of the Convention we have reduced the tax limit from seven and a half to six and a half mills. Some of the members of the Convention are apprehensive that that will put the Convention in a position that it will be impossible for them to maintain and continue the present appropriation to the public schools of Alabama. If that is true, if by this ordinance we have put the Legislature in a position that it cannot further help the public schools, then it becomes necessary if we would keep our faith with the people, to put the people where they themselves can help the public schools, and now the question is as to how that shall be done. In my humble judgment it would be unwise to put any clause in the Constitution of this State by which you elevate money against men. It will be a departure from our theory and system of government. It will be contrary to the grand principles and grand doctrines of the Democratic party.

Mr. President, I have faith in the distinguished gentlemen who compose and make up the Committee on Taxation and I think they should be willing and this Convention should be willing on an all important question like this to be conservative, to be wise and not hastily consider this question; I have learned that the Committee on Education has this same subject under consideration and very soon will bring into this body an ordinance on the subject of local taxation for the benefit of the schools. My purpose in rising was not to make a speech, but to make a motion that this particular section 5 as reported by the Committee on Taxation from and including the word "provided" in Section 5 be laid upon the table to be taken up and considered when the Committee on Education makes its report. I believe that this would be wise as I have suggested it is all important. The people of Alabama while they are interested in the great subject of suffrage, purifying the ballot and having honest elections, have never lost sight of the great subject of free schools and education in Alabama.

MR. HARRISON—When does our Committee on Education expect to report and what does it expect to report and in what way are they better informed than the Committee on Taxation?

MR. BULGER—They are not any better informed. They do not claim that, but they have had under consideration this subject of education and it seems to me that this particular subject is as well in the hands of the Committee on Education as it is in the hands of the Committee on Taxation and certainly it is safe in the hands of both of these learned committees and we have then the advantage of a report from both of the committees on this subject.

MR. HARRISON—Can you not tell us the report?

MR. BULGER—No, sir; because the reduction in the rate of taxation has somewhat changed the views of the Committee on Education and since that has passed, they have been formulating a report upon that particular subject that will be more satisfactory than the one we are now discussing and at least this Convention and the people of Alabama cannot be injured by having them both together.

MR. MILLER (Marengo)—You say they have been formulating a plan since the tax limit was reduced. Have they had a meeting since?

MR. BULGER—We have a sub-committee that is working on that matter.

MR. REESE — Has not the Committee on Education by a vote decided to formulate no plan providing for local taxation?

MR. BULGER—No, sir; that committee has a sub-committee which is now considering this subject.

MR. REESE—Has not the full committee passed a resolution saying there shall be no local taxation?

MR. BULGER—Yes; but that was on the theory that there would be no reduction of the tax rate from seventy-five to sixty-five.

Mr. Jones of Wilcox sought recognition from the Chair.

THE PRESIDENT — Does the gentleman desire to interrupt the delegate from Tallapoosa?

MR. JONES (Wilcox)—No, sir; I thought he had finished his remarks.

MR. BULGER—I am not through. I just want to lay that part of the section and the amendment or substitute on the table to be taken therefrom when the Committee on Education makes its report.

THE PRESIDENT—With what part do you start?

MR. BULGER—After the word "provided."

MR. Jones (Wilcox)—Will the gentleman withdraw that motion for a moment?

THE PRESIDENT—The gentleman from Wilcox asks the gentleman from Tallapoosa will he withdraw his motion to table for a moment?

MR. BULGER—I will if the gentleman agrees to renew the motion. Will he do that?



MR. JONES (Wilcox)—No, sir.

MR. BULGER—Then I decline to withdraw the motion.

MR. ROBINSON—I rise to a point of order.

THE PRESIDENT—The delegate will state the point.

MR. ROBINSON—The gentleman cannot move to lay half the section or proposition on the table.

THE PRESIDENT—It seems to the Chair that that point is well taken.

MR. BULGER—Then I move to lay that whole section on the table.

THE PRESIDENT—The gentleman from Tallapoosa moves to lay Section 5 of the report of the Committee on the table to be taken therefrom at the pleasure of the Convention, when the report from the Committee on Education comes in.

A vote being taken on the motion to table and a division being called for, the motion was carried by 63 ayes and 40 noes.

So Section 5 of the Committee's report was tabled.

THE PRESIDENT—The gentleman's motion I believe, applied to the Section and pending amendments?

MR. BULGER—Yes, sir.

THE PRESIDENT — The gentleman so stated his motion but the Chair in announcing the question, omitted to include the amendments, but it was so understood. The clerk will read the next section.

Section 6 was read as follows:

Sec. 6. The property of private corporations, associations and individuals of this State, shall forever be taxed at the same rate; provided, this section shall not apply to institutions devoted exclusively to religious, educational, or charitable purposes.

MR. HEFLIN (Randolph)—I move that the section be adopted.

MR. COBB—I have an amendment.

The amendment was read as follows:

Amend Section 6 by adding, "but this exemption so far as applicable to educational institutions shall be limited to 200 acres of land and the buildings thereon which are used exclusively for educational purposes, and to personal property not to exceed \$10,000 exclusive of philosophical and chemical apparatus and musical instruments and libraries.

MR. COBB—I do not propose to make any argument upon this amendment but simply desire to call the attention of the Convention to this fact that there are educational institutions in this country, and they are multiplying, that are accumulating from time to time vast quantities of land. Those lands they claim to be used for educational purposes and it is going on in this direction until in some counties of the State the revenues of the county are endangered and it is also putting in danger the other property holders of the county and making it oppressive on them and I do believe that the time has come that we should put some limit to the amount of land that can be held free from taxation by these institutions. I therefore introduce this amendment. I am not committed to any number of acres. My belief and best judgment is that while it is wise to exempt from taxation all the buildings erected for educational purposes without regard to the amount of money expended in their erection, and all philosophical and chemical apparatus and musical instruments and property of that kind which must be used for exclusively educational purposes, when they reach out as they are to my certain knowledge and gather in from time to time all the land they can get in certain counties by purchase and claim it to be free from taxation because they belong to institutions which are educational, that there should be a halt.

MR. WILSON (Clarke)—Under your amendment would the State University and the Industrial School have to pay taxes on their land?

MR. COBB—This would not apply as that land belongs to the State of Alabama and is not covered by my amendment.

MR. ROBINSON—This says devoted exclusively to religious, educational or charitable purposes, and that would prevent it.

MR. JACKSON—Will the gentleman permit an interruption?

MR. COBB—There are so many trenching on my time that I don't like to, but I can't refuse.

MR. JACKSON—Would this affect the A. & M. College?

MR. COBB—It would not in my opinion. The A. & M. College and the Girls Institute at Montevallo and institutions of that kind which have attached to them certain amounts of property will not be affected.

MR. FITTS — You stated that the land of the University stood in the name of the State. That is not the case. The title is in the Board of Trustees of the University of Alabama.

MR. LOMAX—It certainly would affect them if that amendment is passed.

MR. FITTS—I know that because I had charge of it.

MR. COBB—I don't know but my friend to the right informs me that these lands are non-taxable and I know they belong to the State although the title may be Trustees.

MR. LONG (Walker)—Would it affect Booker Washington's school, owning fifteen or twenty thousand acres of land in this State?

MR. COBB—I think it would.

MR. LONG (Walker)—I hope so it is just that class of institutions that I am trying to call the attention of the Convention to, not that I am opposed to any of these institutions but—

MR. BULGER—May I ask the gentleman a question?

MR. COBB—I have six already ahead of you that I have not disposed of, but you can go on.

MR. LOMAX—Would it affect the nine district agricultural schools?

MR. COBB — It would not, in my opinion; but if there is doubt about that I am perfectly willing that the amendment shall be so framed as to exempt schools where the lands or property belong to the State of Alabama, although they are held by trustees. But there are private institutions chartered in this State that have vast amounts of money coming to them year after year, and they are buying every acre of land that they can put their hands on—but let me answer the question of my friend from Chambers. I would say, in my opinion, these lands are not exempt from taxation, but when they go before the assessors and claim that they are exempt, the assessors of the various counties are too prone to take refuge behind this exemption clause of the law and exempt all of these lands from taxation. They claim they are exempt from taxation and frequently those claims are allowed. I think before we get through with this section that it should be made plain that while we encourage these private educational institutions, while we wish them God-speed and will give them every reasonable exemption, there should be some limit to it in behalf of the other people of the State.

MR. GREER (Calhoun)—When we went before the people of Alabama, there was a pledge made that no backward step should be taken on education. I believe this amendment is a backward step, and I move to table the amendment of the gentleman from Macon.

MR. WHITESIDE—Will the gentleman permit a question?

MR. GREER (Calhoun)—Yes, sir.

MR. WHITESIDE—I have heard that expression that it was a pledge in the Democratic platform that no backward step should be taken on education that I would like to inquire in what section of the platform it is?

MR. GREER (Calhoun)—I think it is in the platform, although even if it is not in words, it is in principle.

THE PRESIDENT—The question is on the motion of the delegate from Calhoun to table.

A vote being taken on a call for a division, the House, by a vote of 46 ayes and 54 noes, refused to table.

MR. CARMICHAEL (Coffee)—I wish to offer an amendment.

The amendment was read: Amend the amendment by inserting \$20,000 instead of \$10,000.

MR. COBB—I accept that.

MR. O'NEAL—Why don't you exclude all furniture used in the operation of a school?

MR. COBB—My amendment says that.

MR. O'NEAL—No, sir; your amendment refers to philosophical and chemical and musical instruments.

MR. COBB—Put in everything in that line you want.

MR. CARMICHAEL (Coffee)—By unanimous consent, we can include all school furniture.

Objection was made.

THE PRESIDENT—The question is on the amendment of the gentleman from Coffee to the amendment of the delegate from Macon.

MR. COBB—My amendment was drawn up in great haste, and I am perfectly willing that it be put in shape.

MR. SPEARS—May I ask the gentleman a question?

MR. COBB—Certainly.

MR. SPEARS—Do you remember that the Government of the United States donated 25,000 acres of land to Montevallo and in the same act donated 25,000 acres of land to the Booker T. Washington school? Now, what I want to know is, do you propose to tax what the Government gave to the negro school and not tax what the Government gave to the whites?

MR. COBB—No, sir; I don't propose to tax any of that land. I was going to make this motion. This matter occurred to me

hastily, and I drew up this amendment hurriedly, and I move that this matter be referred to the Committee on Taxation to formulate such a report as, in their judgment, will meet the sense of the Convention in this behalf.

THE PRESIDENT—The gentleman from Macon offers an amendment to Section 6. Thereupon the gentleman from Coffee offered an amendment, and now the gentleman from Macon moves to refer the section with the pending amendments back to the Committee on Taxation.

MR. LOMAX—I do not think either of these amendments ought to be referred back to the committee or adopted by this Convention. By no amendment that could be offered would you strike a deadlier blow at higher education in Alabama than by the adoption of this amendment. The amendment as framed and as amended put a tax upon every acre of land owned by the University of Alabama because that land is held in the name of the Board of Trustees of the university and not in the name of the State of Alabama.

MR. FOSTER—May I interrupt the gentleman?

MR. LOMAX—Certainly.

MR. FOSTER—Does not the gentleman know that it is uniformly held by the courts in this country that lands held in the names of trustees for the benefit of States are not taxable?

MR. LOMAX—I do not know that it would be so held as to this land. The Supreme Court of Alabama has never passed on the question and there has never been a constitutional provision of this sort in this State. We cannot tell what the Supreme Court will hold in view of the new and changed purposes of the part of the Constitution makers of the State. This amendment puts a tax upon the A. and M. College, the school at Montevallo, all of their lands. If it so happens that Howard College at Birmingham owns any land, or has in prospect the owning of any land, it would tax that. It would put a tax upon the land of the Greensboro College if it owns any land. It will put a tax upon the land of every institution for higher education in the State of Alabama and I submit it ought not to be done. It also puts a tax upon the personal property of institutions of that sort over \$20,000. Suppose it should happen, and God grant that it may! that either the university of the A. and M. or Howard College or the University of the South at Greensboro or that at Owenton should receive an endowment which would enable them to put in a plant for the education of the young men of Alabama worth \$100,000, do you propose to say that the people of Alabama want to put a tax on \$80,000 of that money invested in Alabama for the education of her young men? Suppose, as my friend from Lauderdale

suggests, some philanthropist should give a library to one of these great institutions of learning in the State of Alabama of the value of \$100,000?

MR. COBB—That is exempted in my amendment.

MR. LOMAX—Is apparatus exempted?

MR. COBB—Yes.

MR. LOMAX—Let that amendment be read again.

The amendment was read showing that the language was not as the delegate from Macon understood.

MR. COBB—Put it there.

MR. LOMAX—That don't include mechanical apparatus or for a school of mines and apparatus that would be needed in many different schools that might be established in any of these institutions.

MR. WHITE—If some gentleman should donate \$100,000 of bonds to the university the interest to be applied annually, would that be exempt?

MR. LOMAX—It would not be under this amendment.

But even admitting that the university lands would be exempt, even admitting that the Montevallo property and lands would be exempt and that the Agricultural and Mechanical College would be exempt and that Howard College and the Greensboro and Owenton Colleges would be, are we going to pass this amendment to put a tax upon the school of Booker Washington? Why should we tax that more than other schools? I submit to you gentlemen of the Convention.

MR. OATES—I would like to ask my colleague from Montgomery if the State is not a contributor to that school?

MR. LOMAX—Yes.

MR. OATES—And would it not assist in cutting down so much of the State's appropriation?

MR. LOMAX—Yes.

A Delegate—I would like to inquire whether or not the Masonic Temple costing over \$50,000 would be exempt under this.

MR. COBB—That is education.

MR. LOMAX—It is charitable, devoted exclusively to charity.

MR. COBB—The gentleman misunderstood the amendment. This applies only to educational institutions and does not include the Masonic Temple or churches or charitable institutions, and

while I am on my feet I want to disclaim any purpose to discriminate on account of race, color or previous condition.

MR. ROBINSON—May I ask the gentleman from Montgomery a question?

MR. LOMAX—Certainly.

MR. ROBINSON—Ought not agricultural schools to have more than two hundred acres of land?

MR. LOMAX—Certainly they should. Then look at it in another way. The State of Alabama contributes—I beg your pardon—pays to the University of Alabama on the debt it owes it, \$24,000 a year and pays to the University of Alabama on the debt it owes it, \$24,000 a year and contributes out of the general fund \$10,000 a year to support the institution. Where is the sense, as suggested by my colleague from Montgomery, (Mr. Oates), of paying \$36,000 out of your treasury a year for the support of an institution and then taking back half of it in the way of taxes? The same proposition applies to the A. and M. College.

MR. COBB—It has no application whatever to the University or to the A. and M.

MR. BULGER—For information, suppose one of the religious denominations owned six or eight hundred acres of land and established a school on it, could that be taxed?

MR. LOMAX—Under this amendment it would be taxed. And if the A. and M. College at Auburn owns land, the effect of this amendment is to tax that land, and there is no sense in giving to that institution a certain amount of money a year on its endowment fund and requiring it to pay back to the State Treasury a part of that money by way of taxation; and there is no more reason why the Constitutional Convention should put a tax on a denominational school because it owns property and is in better condition by reason of owning property to extend higher education to the sons of Alabama, than to extend the same proposition to State schools. Instead of undertaking to tax these institutions and cripple their energies, instead of undertaking to reduce their powers and curtail their influence, we should in the interest of—I am not talking about barefooted boys alone—but in the interest of education in Alabama, in the interest of the wider spirit and our broader enlightenment, in the interest of a grander civilization, we should contribute every means in our power to upbuild every institution of learning which has for its purpose the improvement of our youth in letters, in morals, and in character. I submit that this Constitutional Convention cannot afford, in this day and time, in this enlightened age, when all the energies of all the civilized countries in the world are being used for the upbuilding of man's character, for the elevation of his morals and the broadening of

his mind—I submit that we ought not to take a step which puts Alabama back amid the dark ages in the line of education, and which, in my judgment, strikes down and impairs the usefulness of every institution of higher learning in the State.

The section as reported by the committee is, I am informed, word for word the section which was in the constitution of 1875. I have no doubt if I had the references before me, I could show that the same section was in every Constitution that has been adopted in Alabama. I do not suppose that, ever before, in any Constitutional Convention in Alabama, it was proposed that the State, by means of taxation, should undertake to cripple and paralyze and destroy the institutions of higher education and learning that existed within the State. For the reasons I have stated, I move that the motion to refer this proposition and amendments back to the committee be laid on the table. I do not want to cut off debate, and if my friend from Macon wants to discuss it, I will withdraw the motion to table.

MR. COBB—I would like to have five minutes.

THE PRESIDENT—The motion cannot be withdrawn without the consent of the Convention. Is there objection?

There was objection, and, a vote being taken, the motion to table was carried.

MR. COBB—I withdraw my amendment. It was tentative, more than anything else, and I ask leave to withdraw it.

There was no objection and the amendment was withdrawn.

MR. LONG (Walker)—I move to amend by adding after the word education the words “not over 1,500 acres of land held for educational purposes shall be exempt from county taxation; provided, that all buildings and personal property of every description shall be exempt from all taxation.

MR. LONG (Walker)—I shall not consume much of the time of the Convention on the amendment. I just want to say that my county is suffering more today than any two counties in the State. These institutions hold sixty-five or seventy thousand acres of the most valuable land in the State of Alabama in fee simple. If the State of Alabama wishes to exempt them from taxation, they have the right to do it, but I do deny the right of the State to cripple my county's resources by exempting them for all time to come.

MR. BURNETT—May I ask the gentleman a question? Are you aiming at Booker Washington's school?

MR. LONG—Yes, sir; why, that institution has gotten so much land that absolutely a number of settlers have been turned out of their homes by donations of these lands.



MR. WHITE—I would like to ask the gentleman a question. Were those lands on the tax rolls when they were given to that school?

MR. LONG (Walker)—Some would have soon been.

MR. WHITE—But were any on the rolls?

MR. LONG (Walker)—No, they were not. The gentleman knows it takes five years under the laws of the United States for that land to become taxable.

MR. FITTS—You are striking at the twenty odd thousand acres University endowment held in Walker County.

MR. LONG (Walker)—No, sir; I am striking at all those institutions that hold these vast quantities of land without taxation.

MR. FITTS—That is what I thought you were striking at and I just wanted to uncover it.

MR. LONG—As I say people have been turned out of homes so that the University of Montevallo and Booker Washington School may have more lands. You may have the power but you have no right to exempt them from County taxation. In the name of the Lord ain't fifteen hundred acres enough. Our development is being kept down by these holdings. You cannot walk across their land without risk of being persecuted and prosecuted by these great corporations. The State has the right to keep up the University and to keep up the school at Montevallo but it has not that right at the expense of Walker County. I am perfectly willing for the Convention to do as it pleases but it is a question of simply right and justice to my county and you should not allow the Montevallo University or any other institution to have hundreds and thousands of acres of land without paying taxes holding them in the hope that they will be worth 3 or 4 or 5 hundred dollars an acre. You have no right to let them hold their lands at the expense of Walker County.

MR. JENKINS—May I ask the gentleman a question?

MR. LONG (Walker)—Yes.

MR. JENKINS—What is the assessment roll of Walker County?

MR. LONG (Walker)—Six millions.

MR. JENKINS—How much do you want?

MR. LONG (Walker)—We want to manage our own affairs.

MR. BROWNE—I move to lay the amendment on the table.

A vote being taken the motion to table was carried and on a further motion by Mr. Browne the section was adopted.

THE PRESIDENT—The Clerk will read the next section.

Section 7 was read as follows:

Sec. 7. No city, town, or other municipal corporation other than provided for in this Article, shall levy or collect a larger rate of taxation, in any one year, on the property thereof, than one-half of 1 per centum of the value of such property, as assessed for State taxation during the preceding year; Provided, that for the payment of debts existing at the time of the ratification of the Constitution of 1875 and the interest thereon, an additional rate of 1 per centum may be collected, to be applied exclusively to such indebtedness; provided further, that for the maintenance of public schools such city, town or other municipal corporation may levy and collect such special tax as may be authorized by law, provided such special tax shall not be levied and collected when it shall cause a greater rate of taxation in any one year than \$1.75 on every \$100 of taxable property, for all State, county and municipal purposes, except the erection, construction and maintenance by counties of necessary public buildings, bridges or roads, and provided such special tax for schools, the time it is to continue and the purposes thereof, shall have been first submitted to a vote of the property tax payers who are qualified electors in said city, town or other municipal corporations, and voted for by majority thereof, in numbers, and in value of taxable property, voting at such election, and provided such tax for schools shall be apportioned equitably and paid to the public schools of said city, town or other municipal corporation by the municipal authorities thereof; and provided, this Section shall not apply to the city of Mobile, which city may levy a tax not to exceed the rate of three-fourths of 1 per centum to pay the expenses of the city government, and may also levy a tax not to exceed the rate of three-fourths of 1 per centum to pay the indebtedness of said city existing at the time of the ratification of the Constitution of 1875 and the interest thereon; Provided further, that this Section shall not apply to the city of Birmingham, which city may levy and collect a tax not exceeding one-half of 1 per centum, in addition to the tax of one-half of 1 per centum hereinabove allowed to be levied and collected, such special tax to be applied exclusively to the payment of the interest on the bonds of said city of Birmingham heretofore issued by said city in pursuance of law, and for a sinking fund to pay off said bonds at the maturity thereof.

MR. WEAKLEY—The Committee on Municipal Corporations under instructions of this Convention has submitted a report upon municipal taxation. In order to save time that would be consumed in the discussion of this question I move that Section 7 be laid upon the table and be taken therefrom to be con-

sidered with Section 11 of the report of the Committee on Municipal Corporations which covers identically the same question.

MR. BROWNE—As your report is in here, why not bring it up and consider it now. It has to come under the head of taxation and when we get through with this report we can order it to a third reading and be through with it.

MR. KYLE—Before that motion to table is put I would like to offer an amendment.

THE PRESIDENT—Does the gentleman withdraw?

MR. WEAKLEY—I will let him offer the amendment provided it takes the same course.

MR. BROWNE—I make the point of order that the gentleman cannot do that and hold the floor. I would like to have him be as discourteous to other gentleman as to the Committee.

MR. WEAKLEY—Then I decline to withdraw.

THE PRESIDENT—It seems to the Chair that the gentleman can yield to the gentleman from Etowah if he desires.

MR. WEAKLEY—If the Chair so rules I take pleasure in yielding. I simply desire that this matter shall be discussed with the report of the Committee on Municipal Corporations.

MR. BROWNE—I make the point of order that the gentleman cannot control the floor by making a motion to table and then withdrawing it to let other members offer amendments and still hold the floor.

THE PRESIDENT—The gentleman from Lauderdale yields to the gentleman from Etowah to offer his amendment. And the question as to who has the floor will be a question for the Chair to determine when it arises.

MR. FOSTER—The gentleman from Lauderdale also yields to the gentleman from Tuscaloosa to offer an amendment.

The amendment of the delegate from Etowah was read as follows:

Strike out all of said section commencing on the eighth line after the word "collect" and ending at the word "qualified" on the fifteenth line and insert the following:

A special tax not to exceed 1-4 of one per cent, provided such tax shall not be levied and collected until such special tax for public schools, the time it is to continue and the purpose thereof, shall have been submitted to a vote of the qualified—

And to further amend said section, commencing after the word "thereof" on the twenty-ninth line and read as follows:

And provided all cities, towns and municipal corporations in this State, except the cities of Mobile and Birmingham, otherwise provided for in this Constitution, having a bonded indebtedness created after the adoption of the Constitution of 1875 and now in effect, as well as all cities, towns and municipal corporations in this State that desire to raise means to secure light plants, water works and sanitary sewerage by the issuance of bonds within the limit prescribed in this Constitution, shall be authorized to levy and collect a tax not to exceed 1-4 of one per cent on all real and personal property listed for taxation in said cities; to be applied exclusively to the payment of interest on such bonded indebtedness and to provide a sinking fund to pay off the bonds at maturity; provided, such levy and collection of said tax shall first have been submitted to a vote of the qualified electors of such city, town or municipal corporation and voted for by a majority thereof in number and value of taxable property voting at such election.

Amendment by Mr. Foster was read as follows:

Amend Section 7 by striking out of line 7 the words "maintenance of public schools," and inserting in lieu thereof the following: "payment of debts, existing at the ratification of this Constitution and interest thereon." And by striking out all from and after the word "roads" in line 13, to and including the word "thereof" in line 19, and inserting in lieu thereof the following: "and provided that the question whether or not such special tax shall be levied be first submitted to a vote of the qualified electors in said city, town or other municipal corporations, and voted for by a majority thereof."

MR. WEAKLEY—I now renew my motion that Section 7 and the amendments be laid on the table to be taken therefrom when Section 11 of the report of the Committee on Municipal Corporations is considered.

MR. SPRAGINS—Will the gentleman allow me to offer an amendment before he does that?

THE PRESIDENT—The Chair will state to the gentleman from Madison that there is an amendment and an amendment to the amendment already pending.

MR. REYNOLDS (Chilton) — Haven't we already got the committee's report on the other question?

THE PRESIDENT—It has been reported but it is not up for consideration at this time.

MR. REYNOLDS—Could it not be taken up with this report?

THE PRESIDENT—It is in the power of the Convention to do so if it chooses.

MR. REESE—I rise to a question of inquiry. Can a motion to table have tacked to it that it should be considered at some contingent period when something else is to be considered?

THE PRESIDENT—The Chair is of the opinion that when an amendment or resolution or ordinance is laid upon the table, it may be taken up at any time at the pleasure of the Convention.

MR. REESE—Then that part of the motion that it shall be considered at a certain time will not be considered?

THE PRESIDENT—It seems to the Chair that the Convention can take it up when it chooses.

MR. WHITE—Won't the effect of this motion if carried be to postpone the consideration of this until that particular time?

THE PRESIDENT—That is the effect of it, but the Convention could take it up immediately if it pleases.

MR. REESE—I make the point of order that the motion is out of order because it is not a motion to table and that part of it is out of order which provides for the time when it shall be taken up.

THE PRESIDENT—The point of order is overruled.

A vote being taken the motion to table was carried.

THE PRESIDENT—The Secretary will read the next Section.

The Section was read as follows:

Sec. 8. The General Assembly shall not have the power to require the counties or other municipal corporations to pay any charges which are now payable out of the State Treasury.

MR. CARMICHAEL (Coffee)—I move that the Section be adopted.

MR. GRAHAM (Montgomery) — Before that Section is adopted I would be pleased to hear the Chairman of the Committee to explain what it means. I don't understand what that means.

MR. O'NEAL — Is not that same provision in the present Constitution?

MR. BROWNE — That has been in the Constitution since 1875. And it means that the Legislature shall not have the power to require counties and municipalities to pay any of the charges that are now payable out of the State Treasury.

MR. GRAHAM (Montgomery) — I don't understand what that means.

MR. WHITE—Does that include the judges salaries?

MR. BROWNE—I suppose so. If it were not for such a provision in the Constitution the General Assembly could require one county to pay the salary of the Governor.

MR. ROGERS (Sumter)—That is an exact copy of the old Constitution, is it not?

MR. BROWNE—I did not want to inform the gentlemen it was. I wanted them to vote on their own convictions. I thought the lawyers would know it was a copy of old Section 9.

A vote being taken the Section was adopted.

THE PRESIDENT—The Clerk will read the next Section:

The next Section was read as follows:

Sec. 9. No county shall become indebted in an amount greater than 5 per centum of the taxable value of the property thereof; Provided, this Section shall not apply to any indebtedness in excess of such 5 per centum, which has already been created, or authorized by law to be created.

MR. WEAKLEY — I desire to offer an amendment to that Section.

The amendment was read as follows:

Amend Section 9 by striking out the word "five" in the first line and inserting instead the word "three."

MR. BROWNE—I will state that the committee is willing to accept that amendment.

MR. HEFLIN (Chambers) — Then I move the adoption of the section as amended.

MR. BROWNE—I will state that I am authorized by the committee to say we accept the amendment making it three. The ordinance was originally introduced by the gentleman from Lee, Mr. Harrison, at three per cent., and the committee changed it to five, in order that the Convention could lower it if they saw fit.

MR. O'NEAL (Lauderdale)—Will the gentleman state, for the information of the Convention, what counties, if any, in Alabama, have an indebtedness of more than 5 per cent. of the taxable value of property.

MR. BROWNE—We know of none.

MR. O'NEAL (Lauderdale)—What is the largest percentage in any county at this time?

MR. BROWNE—I cannot answer the question. My county keeps out of debt, so I was not interested in it.

MR. LOWE (Jefferson)—This seems to me to be an innovation, and it strikes me as being a very dangerous innovation. I certainly do not know, and evidently the Chairman of the committee does not know, the average indebtedness of the counties in Alabama today, but we do know those counties which perhaps the greatest debts are in the most prosperous condition. There are counties in Alabama today which are progressive, building roads and making improvements that are absolutely essential to the development and prosperity of the county. Now this Constitutional Convention ought not to think that it can supplant the local authorities in determining what is best for every county in Alabama. Every county in Alabama, before it issues bonds, will have to have the sanction of the General Assembly, and it will also have to have the sanction of the Commissioners' Court, the immediate representatives of the people of the county. I am willing, if this Convention in its wisdom thinks it proper to do so, that a limitation be put upon the counties, though I challenge the gentleman to show in any one instance in all the history of Alabama since the Republican days, when it has been necessary for the Constitutional Convention to limit the power or the right of the county to borrow money for local purposes, I challenge the chairman of the committee, or any member of the committee, to show that any county in Alabama has abused its power at any time within the last quarter of a century. Why then should we, with no more consideration than it is apparent the committee has given this proposition, impose this limitation upon the counties of this State?

Now, if we are going to adopt a limitation at all, let us adopt such a liberal limitation that there would be no danger on the one hand of the public works of the county suffering, or on the other hand of extravagance on the part of the local officers. I believe the people of my county are willing to trust their local authorities in matter of the expenditure of their moneys and the determination of its indebtedness. Now I do not propose that any county should fix the limit of its indebtedness. It must be authorized by the General Assembly, and must be ratified by the Commissioners' Court of the county, the immediate representatives of the people.

I think that the amendment of three per cent. should lie upon the table, but I will not make the motion inasmuch as I understand Mr. Weakley wishes to speak to it.

MR. KYLE—I want to say as far as the gentleman's idea is concerned that it would not work in my county. The Commissioners' Court came down to the last Legislature and without any consultation with the tax payers, secured the passage of a law

authorizing the county to issue thirty thousand dollars of additional bonds, for the purpose of paying the current expenses of the county, without the knowledge of the people at all, and if that kind of chicanery can be carried on with the Legislature, it is time to put a limit on it to stop it.

MR. WEAKLEY — In my opinion the question of a debt limit is more important than the question of a tax limit. If the Constitution of 1875 had inserted in it some limitations upon the taxing power of the cities and counties of this State to create debts, the present financial condition with which we are confronted would not exist today. The gentleman who has preceded me seems to think that this limitation is too low, and that it would interfere with the county of Jefferson. In answer to him I desire to say that the county of Jefferson has an assessed valuation of forty millions of dollars, and under this limitation the county of Jefferson can create a debt of \$1,200,000, and I submit, gentlemen, that debt is all that the county of Jefferson is able to pay the interest on with the proceeds of a fifty cent tax rate.

I have given the matter some investigation, and so far as I am able to find out, there is not a county in the State of Alabama that would be seriously affected by this limitation, and I do know, Mr. President, there is one county in the State that has contracted a debt of exactly five per cent of its assessed valuation, and has defaulted in its interest, and is unable to pay it, and that too when one-half of this debt is bearing interest at the rate of only 5 per cent. per annum. If gentlemen will take the report of the State Auditor, which they have upon their desks, they will see there the statement of the total assessed valuation of every county in the State, and each member can calculate for himself how much his county will be allowed to create under this limitation. I doubt not Mr. President, after that calculation has been made, every member will come to the conclusion that a limit of 3 per cent. will allow all the debt that the county in reason ought to create. The gentlemen must remember that counties are required to raise money and to incur debts for very few things. The building of Court Houses, the erection of jails, poor houses, and the construction of a road system—

MR. O'NEAL (Lauderdale)—Will the gentleman from Lauderdale yield to a question?

MR. WEAKLEY—Yes.

MR. O'NEAL (Lauderdale)—You understand this Section to mean, then, that you could not impose a tax greater than 3 per cent., and you must include in that the debt which already exists?

MR. WEAKLEY—Yes sir.

MR. O'NEAL (Lauderdale)—The bonded debt that already exists has got to be included in that 3 per cent?



MR. WEAKLEY—Yes.

MR. O'NEAL (Lauderdale) — And counties that now have that limit—

MR. WEAKLEY—Cannot create any additional debt. And there are very few counties that have it.

I was going to say that the reason counties should create debts are very few. They are to build court houses and jails, and bridges, and roads—

A DELEGATE—And poor houses?

MR. WEAKLEY—And poor houses. And I will state further, that at the present rate we are contracting debts, we will have to build a few more poor houses in this country before very long.

A calculation of these matters of the debt limit, has induced the leading financiers of the county to conclude that a 5 per cent. debt limit is a reasonable one, where there is no limitation upon the rate of taxation, but where there is a limitation upon the rate of taxation as in this State, and our means of paying the interest upon the debt we already have is small, a limitation of 3 per cent. is not too great a restriction.

MR. O'NEAL — How many States in the Union have this limit?

MR. WEAKLEY—The gentleman asks how many States in the Union have this debt limit. I answer him that probably two-thirds or probably three-fourths of the States in the Union have a debt limit. It is recognized everywhere, as I said in the beginning, as more important than the tax limit, because if the debt is not created the tax will not have to be levied to pay it.

MR. WATTS—I am opposed to the amendment of the gentleman from Lauderdale. I do not think the 5 per cent. should be stricken out and 3 per cent. substituted. It would not do for the county of Montgomery. We are engaged in a system of road building, to bridge our prairies and put our county in a fine condition. That system has been extended for about twelve miles in every direction. If this amendment were adopted it would prevent Montgomery from extending her road system, and I do not think it would be advisable to adopt the amendment in our case. The different counties have their Boards of Revenue, or Commissioners' Court, who have these matters under consideration, and 5 per cent. it seems to me is a small enough limit to put upon them. I hope, therefore, Mr. President, that the amendment of the gentleman will not be adopted.

MR. HARRISON—I want to ask the delegate what should be the indebtedness of Montgomery County?

MR. WATTS—About a million dollars. Five per cent. would make it a million, and 3 per cent. would make it about \$600,000, and we already have \$425,000 of bonds for roads, not counting those for the Court House and other purposes.

MR. WADDELL—Mr. President, I oppose the amendment which proposes to change it from 5 to 3, simply for the reason that the poorer counties in the State, should they lose their court houses and jails, or either of them, by fire, they would not be able to rebuild them, if the 3 per cent. rate should carry. The taxable property in my county is given in this year at about \$1,700,000, and I expect there are some counties in the State which come a great deal below that. Should it become necessary for my county to build the Court House or jail, under this rate, we would not be able to meet our current expenses and pay for it. For this reason I oppose the amendment.

MR. WILSON (Clarke)—I favor the amendment proposed by the gentleman from Lauderdale. I think it is more important, as he says, to limit the debt contracting power of a county, than it is to limit the rate of taxation. While the gentleman was speaking I reverted to my own county, and made some figures. In my county, as I remember, the taxable values are in round numbers, three millions of dollars. If the Committee's report is adopted, authorizing that county to incur an indebtedness of 5 per cent. of its taxable values, it might incur an indebtedness of \$150,000. At 6 per cent interest, the interest on such a debt would be \$9,000, to say nothing of ever providing for paying back the principal. The total tax which could be collected under the limitation of 50 cents on the hundred dollars is \$15,000, leaving only \$6,000 to pay all of the living expenses of the county, after paying the interest of \$9,000 on the maximum amount of the debt which could be contracted. On the other hand, with a capacity to contract debts to the extent of 3 per cent of the taxable values—

MR. LOWE (Jefferson)—Will the gentleman pardon me for an interruption?

MR. WILSON (Clarke)—Certainly.

MR. LOWE (Jefferson)—What is the debt of your county now?

MR. WILSON (Clarke)—I think it is about \$10,000, probably. It is very small.

MR. LOWE (Jefferson)—There is no limit in the Constitution now.

MR. WILSON (Clarke)—None whatever.

MR. LOWE (Jefferson)—Then do you need a limit to keep the Commissioners' Court from running up that debt beyond what they can pay?

MR. WILSON (Clarke)—Yes; I think a limit should be put on the power to contract debts, and I will tell you why. We desired to build a court house a few years ago, and issued \$15,000 in bonds to build it, and when we went to sell those bonds, we had to pay about 6 per cent interest. In my judgment, if it had been absolutely guaranteed in the Constitution that that county could never create any debt above what it could pay the interest on, we could have sold those bonds at a great deal less rate of interest than we did. That is the reason I want to put in there to limit the capacity to contract debts.

Now at 3 per cent. my county could contract \$90,000 worth of debts. Six per cent on that debt, would be \$5,400, which would leave for the general living expenses of the county \$9,600. Now, I figure that on the basis of 6 per cent, but I believe if we put a limitation in the Constitution upon the debt-contracting power, then every one of these counties can get their debt floated for a lower rate of interest than they have to pay now to get their bonds floated. For that reason, I am in favor of the amendment proposed by the gentleman from Lauderdale, and I believe this Convention should adopt it.

In answer to the gentleman from Montgomery, in reference to his public roads, I will ask the chairman of the committee if, under the prior section of this Article, the County Commissioners have not the right to levy additional taxes above this 50 cents, for public roads?

MR. BROWNE—They have a right to include public roads along with bridges and public buildings, as one of the subjects of special taxation.

MR. WILSON (Clarke)—For special taxation above 50 cents, and it is not limited at all?

MR. BROWNE—Yes, it is limited in the report of the committee to one-fourth of one per cent. In the present Constitution, it is not limited at all.

(Mr. Ashcraft here took the chair).

MR. HARRISON—I trust that the amendment offered by the gentleman from Lauderdale and accepted by the committee will be adopted. There can be no question in my mind that this limit should be fixed both for the counties and for the cities and towns. For the information of my friend from Jefferson, Mr. Lowe, who asks the question if, in the last half century, we have ever had any reason to complain, I would remind him of the history of seven counties that were long known in Alabama as the strangled counties?

MR. LOWE—I said in the last quarter of a century.

MR. HARRISON—And those strangled counties, or some of them, have been laboring from the effects of that ever since.

MR. LOWE (Jefferson) — That was under the Republican administration in carpet-bag days.

MR. HARRISON — Yes, under Republican administration, when they were allowed to vote on it, and went through the form of voting for it.

MR. HINSON—I have been informed that the County of Colbert has a bonded indebtedness of \$200,000, and that is about 5 per cent of the taxable valuation of the property in the county.

MR. HARRISON—They need a guardian if they owe that much.

MR. HINSON—I also understand that she has made default in the payment of her interest, and is unable to pay the interest, and that this state of affairs exists right now in Colbert County, and she has a debt of only 5 per cent of the value of her taxable property. I would like to ask if that is the fact? I do not know, but I have been informed that is the condition of affairs in that county.

MR. HARRISON—I would be pleased to reply to the delegate, but I am not familiar with the condition of affairs in the county to which he refers. What county did you inquire as to?

MR. HINSON—Colbert County. I say if that is a fact, it would answer every objection that the gentlemen make to this limit, and show the necessity for a 3 per cent limit.

MR. HARRISON—Yes, sir; there is no question of the necessity. I think we owe it to the people of Alabama. We owe it to those counties, and we owe it to the cities, too, because they are today paying a higher rate of interest than any other municipal corporation in the country.

Answering the question of the gentleman to my right, one of my colleagues here has furnished me some figures as to the taxable property in Colbert County. It is placed at \$3,874,000. Making a calculation at a limit of 5 per cent, it would be able to incur a debt of \$193,000, which shows, as intimated by the gentleman's question, the necessity for this limit. The great necessity for it is that no county, no municipality, city or town, should be permitted to incur a debt which they cannot reasonably expect to pay within the limit of taxation authorized by the State. We need, Mr. President and delegates, to prevent their incurring debts, for we do not want to place anything in the Constitution that sounds like repudiation, and we should not permit municipalities to go beyond what they can reasonably pay by the authority they have to raise money within the tax limit, and I submit

that not only as to the counties, but the delegates will observe that the very next section of this report places the same restriction on towns and cities, and if you make a calculation, and apply it to the tax limit, you will find three per cent for both of them is a safe and conservative limit, and that while we ought not to interfere with any debt already contracted, because if they have incurred it they should pay it if they can, we should come in with the strong arm of the fundamental law of the land and say thus far you shall go and no further. We have fixed the limit of taxation, and now we fix the limit beyond which you shall not incur any debts. It would give credit to these counties. It would give credit to the cities. It would prevent what we have seen in Alabama, and what we hear today. As said in my opening remarks, I know of one county that was prostrated for years, and never would have gotten out of her trouble if the State of Alabama had not come to her rescue and loaned money to the county in an indirect way. After her inability to pay her debts, they effected a compromise and finally worked out of it, and upon the principle that a burnt child dreads the fire, I trust that no other county will have to pass through it. My good friend from Chambers and I labored here for years to try and work out of it, his county being one of them.

While, perhaps, the danger today is not so great as it has been, I ask the delegates to reflect upon the fact that recently many cities and towns in Alabama have defaulted in the interest on their bonds. In my own town recently it was with great difficulty that they could float a small number of bonds, because certain towns, I don't care to name them, but you can name half a dozen towns in Alabama that have defaulted and have not paid their interest, and the credit of Alabama cities and towns have been affected in the great markets of the country, and those who are disposed to pay their debts have to pay one, one and half and two per cent more interest simply because they say that Alabama towns are permitted to incur a greater debt than the tax limit will authorize them to pay.

For this reason I trust this limit will be conservative. My good friend from Russell made the illustration that the court house might be burned down. Taking his own county as an illustration it has an assessed valuation of \$2,484,000, which at 3 per cent would authorize his county to incur a debt of \$74,520, which I apprehend is as much as Russell County ought to incur. Certainly for his court house, because I am satisfied it could be replaced for twenty-five thousand dollars if it were burned down, and seventy-four thousand dollars, I submit, would be ample. Even if you apply it to the great County of Montgomery, I submit with all of its capital and wealth ought not to be allowed to go over \$600,000 indebtedness, because I doubt their ability to pay it if they should incur it.

MR. SANDERS—I desire to offer a substitute.

The substitute was read as follows:

No county shall become indebted in an amount greater than three per centum of the taxable valuation of the property thereof, provided this limitation shall not affect any existing indebtedness exceeding such three per centum which have been authorized by law to be created.

MR. SANDERS—I offer that substitute not for the purpose of discussing the merits of the three per cent or the five per cent limitation, but for the purpose of clearing up a manifest and patent ambiguity. Section 9, as it reads, is as follows: No county shall become indebted in an amount greater than five per centum of the taxable value of the property thereof; provided, this section shall not apply to any indebtedness in excess of such five per centum, which has been already created or authorized by law to be created.”

The reasonable construction of that language is that if an indebtedness of five per cent or three per centum, which ever may be adopted, already exists, the section does not prevent the creation of an additional indebtedness of five per cent or three per centum. I am satisfied that this is not the meaning or the intention of the Committee.

MR. BROWNE—Will the gentleman allow me to ask a question?

MR. SANDERS—Yes, sir.

MR. BROWNE — Is the only change you make by your amendment inserting the word limitation in lieu of the word section?

MR. SANDERS—I ask the clerk to read the amendment, it is short. The amendment was again read.

MR. SANDERS—It simply means that if there is an existing indebtedness, exceeding three per centum, or if by law such indebtedness has been authorized to be created, this section shall not affect it, and shall not apply to it. If, in a county where no indebtedness has been created at all, under the substitute that I offer, an indebtedness of 3 per cent may be created. If one and a half per cent indebtedness already exists, there would only be an additional indebtedness of one and a half per cent. In other words, Mr. President, where the indebtedness is not already up to the limit it may be increased to the limit. If it exceeds the limit already, or if, by law, an indebtedness exceeding the limit has been authorized, this limitation shall not apply to it. I merely offered the substitute for the purpose of clearing up what in my

mind is a very manifest ambiguity in the meaning of the section as reported by the committee.

MR. O'NEAL (Lauderdale)—I fully concur in the wisdom of a provision limiting the power of counties to create debts. I think it is one of the most important provisions in this Article, but at the same time I am inclined to believe that the limitation of 3 per cent, as suggested by the amendment of the gentleman from Lauderdale is too low. Now by an examination of the Constitutions of all the States on this subject, we find that but one State has a limitation as low as that. That is the State of Indiana. All of the Constitutions enacted since about 1890 contain similar provisions. The State of New York had a provision of 10 per cent instead of three.

The State of California has the following provision: No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof on or before maturity, which shall not exceed forty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void."

Now, take the State of Georgia, our neighbor. Here is a provision which they have: "The debt hereafter incurred by any county, municipal corporation or political subdivision of this State, except as in this Constitution provided for, shall never exceed 7 per centum of the assessed value of all the taxable property therein, and no such county, municipality or division shall incur any new debt, except for a temporary loan, or loans, to supply casual deficiencies of revenue, not to exceed one-fifth of one per centum of the assessed value of the taxable property therein, without the assent of two-thirds of the qualified voters thereof, at an election for that purpose, to be held as may be prescribed by law."

Now the State of Georgia authorizes a rate of 7 per cent, and in addition excepts temporary loans to supply casual deficiencies of revenue, not to exceed one-fifth of one per cent.

It further provides: "But any city, the debt of which does not exceed 7 per centum of the assessed value of the taxable property at the time of the adoption of this Constitution, may be authorized by law to increase, at any time, the amount of said debt, three per centum upon such assessed valuation."

Now, there is 7 per cent with an additional provision. The State of Idaho provides for 5 per cent., with an authority to increase it over 5 per cent in certain contingencies.

Now the State of Indiana has the lowest limit of any State in the Union, so far as I have been able to ascertain. Here is the provision of that State: "No political, or municipal corporation, in this State, shall ever become indebted, in any manner or for any purpose, to any amount, in the aggregate exceeding 2 per centum of the value of taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, and all bonds or obligations, in excess of such amount given by such corporations shall be void; provided, that in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners in number and value, within the limits of such corporations, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition."

Now that State, with that low limit, provides that in case of a great public calamity, or pestilence, or war, invasion or insurrection, that the people, by petition, can increase that amount, provided the petition is ratified by an election. But, we would have absolutely no provision for any class of emergency that may arise.

Take the State of Iowa. The State of Iowa is one of the great States of the Union, and it provides: "No county, or other political or municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding 5 per centum on the value of the taxable property within such county or corporation, to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness."

Illinois and Kentucky have much larger rates than that. The State of Missouri has this provision:

"No county, city, town, township, school district, or other political corporation, or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount, including existing indebtedness, in the aggregate exceeding 5 per cent." And then it provides that even that can be increased.

"It may be allowed to become indebted to a larger amount for the erection of a court house, or jail; and provided, further,



that any county, city, town, township, school district, or other political corporation or subdivision of the State, incurring any indebtedness requiring the assent of the voters aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest."

North Dakota provides for 5 per cent., and permits 3 per cent. for certain contingencies.

Pennsylvania has 7 per cent. upon the assessed value, and allows an increase of 2 per cent. in certain contingencies.

So, gentlemen, 5 per cent. is about the lowest limit in the Union except the State of Indiana. The Committee adopts the amendment of the gentleman from Lauderdale without any qualifications, without any provision for contingencies of any kind, for calamities or war, for invasion or insurrection, or for epidemics, and this might result in tying the hands of the people and preventing them from relieving themselves of this cast iron rule when it would become oppressive.

Therefore, Mr. President, I think that the report as made by the Committee should be adopted. Five per cent. is low enough, and it contains no exceptions for any contingencies. I am willing to accept that. I think that may be safe, but to go any lower, without additional provisions providing for contingencies, would, in my judgment, be unwise and unsafe. I shall, therefore, move to lay the amendment of the gentleman from Lauderdale on the table.

MR. WADDELL—I rise to a question of personal privilege. I stated in my remarks that the taxable value of the property in my county was about \$1,700,000. It is \$2,700,000 for this year—

MR. HEFLIN (Chambers)—I make the point of order that is not a question of privilege.

THE PRESIDENT PRO TEM—The question is upon the adoption of the substitute offered by the gentleman from Limestone.

MR. O'NEAL—My motion is to lay the amendment and substitute on the table.

THE PRESIDENT PRO TEM—The question is upon the motion of the gentleman from Lauderdale to lay the amendment offered by the gentleman from Lauderdale and the substitute offered by the gentleman from Limestone on the table.

MR. WHITE—I call for the reading of the amendment offered by the gentleman from Limestone.

The amendment was read as follows:

Amend Section 9 so as to read: "No county shall become indebted in an amount greater than 3 per centum of the taxable property thereof, provided this limitation shall not affect any existing indebtedness exceeding such 3 per centum which has already been created, or which has been authorized by law to be created.

Amendment by Mr. Weakley—Amend Section 9 by striking out the word five in the first line, and insert instead the word three.

MR. SOLLIE—I ask for a division of the motion. The motion reaches both the substitute and the amendment.

THE PRESIDENT PRO TEM — A division of the motion has been demanded. The question is upon the motion to table the substitute offered by the gentleman from Limestone.

Upon a vote being taken the motion to table was carried.

THE PRESIDENT PRO TEM—The question is on the motion to table the amendment offered by the gentleman from Lauderdale.

Upon a vote being taken, a division was called for, and by a vote of 52 ayes to 49 noes the motion to table was carried.

The President resumed the Chair.

MR. KIRK—I have an amendment.

The amendment was read as follows:

Amend Section 9 by adding the following: "Except where it may be necessary for the erection of bridges and county buildings, which may be paid for by a levy of a special tax."

MR. KIRK—Now the question as to what the limit should be I do not care to discuss, but as my county has been spoken of, it may not be amiss for me to refer to the condition of that county before reaching the point raised by this amendment.

I do not think it is wise for any county to create a debt greater than 5 per cent. of the assessed value of its property. Colbert County has an assessment of something over \$3,800,000. She owes a debt of \$200,000, one half of which draws an interest of 5 per cent. and the other half draws 6 per cent., making the total charge for interest \$11,000. We receive as taxes about \$19,000 in that county, under the present tax rate. You will see from that the small amount that has been left to the county to defray the expenses of the county. We are today in arrears in the payment of interest. We have defaulted, in other words, in the payment of interest. The interest that we are paying, or that we have obligated ourselves to pay, cannot be paid out of the taxes collected

by the county and at the same time defray the other expenses. Therefore, I say it is eminently wise to place a debt limit and that limit, in my judgment, should be three per cent. But whether it is three per cent or five per cent, Colbert County cannot increase that debt.

Now to the point raised by my amendment. The section provides that no county shall become indebted in an amount greater than five per centum of the taxable value of the property thereof. Colbert County has, as I have stated, already exceeded that amount, and if she should meet with the misfortune of losing her court house, it would be impossible for the county to build another court house, or to incur the expense of building another court house, until she could raise the money by this special rate of taxation that is allowed in the Constitution we are now framing. Therefore some provision, or some exception should be made to the rule that would allow any county which had already incurred a debt equal to the constitutional limit, or greater than the constitutional limit, to provide against such contingencies.

MR. FOSTER—Would not your special tax raise sufficient funds to build your court house? One-fourth of one per cent?

MR. KIRK—I think not.

MR. FOSTER — Would it not be about eleven or twelve thousand dollars?

MR. KIRK—We collect now, I believe, about nineteen thousand dollars.

MR. FOSTER—It would be half of that.

MR. HEFLIN (Chambers)—I would like to ask the gentleman as the hour of adjourning has nearly arrived, if he will yield to me for the purpose of introducing a short ordinance. I want it referred to a Committee which will meet immediately after this Convention adjourns.

THE PRESIDENT—Does the gentleman yield?

MR. KIRK—Yes, sir.

Ordinance No. 408, by Mr. Heflin of Chambers:

Be it ordained by the people of Alabama in Convention assembled, That a Sheriff shall be elected in each county, by the qualified electors thereof, who shall hold his office for the term of four years, unless sooner removed, and shall be eligible to such office as his own successor, unless he is impeached during his first term for failing to discharge his duties. Vacancies in the office of Sheriff shall be filled by the Governor, as in other cases; and the person appointed shall continue in the office until the next general election in the County for Sheriff, as provided by law.

Sec. 2. That the Sheriff shall be subject to impeachment and removal for such causes and in such a manner as may be provided by law.

MR. HEFLIN (Chambers)—I ask that the ordinance be referred to the Committee on Impeachment, as they have one on that same line.

MR. JONES (Montgomery)—I ask that the ordinance be referred to the Committee on Executive Department. Evidently this is an attempt to substitute that Committee on a matter on which the Executive Committee has passed, and I do not think it should be done.

MR. HEFLIN (Chambers)—I move that the ordinance be referred to the Committee on Impeachment, because it has a section in it referring to impeachment.

MR. PILLANS—A question of order.

The clock struck the hour of six.

MR. SANFORD—It is six o'clock.

THE PRESIDENT—The point of order is well taken and without a suspension of the rules the question of reference would not be in order at this time.

MR. HEFLIN (Chambers) — I will let it go over until tomorrow.

Thereupon the Convention adjourned until 9:30 a. m. tomorrow morning.

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## THIRTY-SIXTH DAY

MONTGOMERY, ALA.,

Wednesday, July 3, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. Patterson as follows:

Almighty and Ever Living God, King of Heaven and Earth, Maker and Preserver of our bodies and of our spirits, without whose help we can do nothing, but upon whose sympathy and support we may constantly rely, we praise and bless Thee this morning for Thy goodness. We thank Thee for Thy providential care, and we come unto Thee for Thy favor and for Thy grace to help us during this day. We pray that Thou wilt enlighten our minds with the knowledge of Thy truth, and that in all things we undertake to do, we may remember that Thou art our King and our God. We ask that Thou wilt help us. That Thou wilt

strengthen us for every duty. That Thou wilt guide these Thy servants in their deliberations. Wilt Thou keep them true unto themselves, unto duty and unto Thee. Surround us all with Thy protecting care. Watch over us and our interests and those interests which are put in our trust and protection, and when Thou hast served Thy will with us here upon earth, receive and own us as Thine in Heaven, and to Thy name shall be the praise, world without end. Amen.

Upon the call of the roll 114 delegates responded.

Leaves of absence were granted to Mr. Craig for Friday and Saturday; Mr. Sollie for this morning's session; Mr. Sentell for this afternoon and Thursday; Mr. Fitts for today; Mr. Davis (DeKalb) Thursday, Friday and Saturday; Mr. Greer (Calhoun) for Thursday and Friday and Saturday; Mr. Samford (Pike) for today and Thursday; Mr. Gilmore for Friday and Saturday.

The report of the Committee on the Journal was read, stating that the Journal for the thirty-fifth day of the Convention had been examined and found to be correct, and the same was adopted.

MR. REESE—On yesterday I made a motion to reconsider the vote by which the article on Executive Department was ordered to a third reading.

THE PRESIDENT—The special order this morning will be the consideration of the motion to reconsider the vote whereby the ordinance on the Executive Department was ordered to a third reading.

MR. REESE—I desire to submit at this time a few remarks as to why the vote should be reconsidered. I am not one that subscribes to the views laid down by the gentleman from Montgomery a few days ago, which asserts the infallibility of minorities; that minorities are always right and majorities are always wrong. I do not prefer to be classed with minorities. I would rather be with majorities. I concede, however, in the matter before this convention now, that the gentlemen with whom my sympathies are appear to have been in the minority. I think that with all due deference and respect to the gentlemen who compose the committee on Executive Department that they have unwisely advised this Convention. I think the extreme eloquence of the gentleman who is the chairman of that committee has carried this Convention away from its sober thought. Guided by the highest and best motives, the distinguished chairman of that committee has set his great and noble heart upon the adoption of this provision, which is directed and aimed at the Sheriffs of Alabama. I think it is an extremely unwise and imprudent provision. Mr. President, I do not believe that anything that may appear in my humble remarks will perhaps have the effect of changing a vote

upon this question, but I was sent here to represent some of the citizens of Alabama, and I should think that I had done less than my duty if I did not hold up my hand with a feeble warning to this Convention. I make an appeal, Mr. President, in behalf of the constituents that I represent, and I do not make it to the Convention, Mr. President. It may be, perhaps, in bad taste, but I make this appeal to a class in this Convention that I believe the people of Dallas county have a right to appeal to. A class in this Convention that I believe the people of the Black Belt have a right to appeal to. Mr. President, the constituents of the class that I represent have lost their character apparently. They have lost it in the northern counties of this State, and they have lost it in that section of the United States from which it appears at this date that we are to be advised and by whose opinions this Convention should be guided. I speak of the maudlin sentiment or opinion of the people of the North on these questions that confront us here today. There are evils that exist in this country, and to correct those evils the distinguished gentleman, the chairman of the Executive Department Committee, would make a radical departure from a system that has prevailed since Runnymede. The jury system of this country, Mr. President, has been good enough for the common people of this country, and until a man rises and gets as elevated and stands upon as high a plane as the distinguished chairman of that committee, he has confidence in the honesty and integrity of the Grand and Petit Juries of this country.

MR. JONES (Montgomery)—Will the gentleman allow me to ask him a question, because I might have the conclusion and want him to have an opportunity to answer it.

MR. REESE—I would be glad to answer the question of the gentleman.

MR. JONES (Montgomery)—Has it ever been a part of the system of impeachment that a party tried was entitled to a jury trial until put in the Constitution of 1865, in certain cases?

MR. REESE—I will answer that question by saying to the gentleman that I have never heard of a Sheriff being impeached in the State of Alabama by any other method.

Mr. President, here you have a class of county officers, men selected by the electors of the county, and the gentleman has singled out a particular class, and an active, aggressive and vindictive war has been made against this class of office holders. This class of office holders, Mr. President, are citizens of the State of Alabama, and good citizens, too. They are the best citizens we have, and in this connection I am reminded of the tragic death of the great Ceasar at Rome, when the last stab was made, he remarked "and thou too Brutus," for, Mr. President, it would have been well had this stab come from any other source than from which

it originated. The Sheriffs and clerks and the probate judges of this Black Belt country have been the bulwark of the safety of this government, Mr. President, in my short life, I have been actively engaged in the carrying on of those measures which I have thought were for the best interest of the people. I first participated in public affairs of this State at a time which was the most critical in twenty-five years. It was at a time when the white man's government was threatened in this country. When I saw men to the manor born had been misled, and allowed themselves to march under the flags and in the clans of the enemies of white supremacy, men parading under piratical flags, blood of our blood, born in this country, and it was at that period that the power and the patriotism of the Sheriffs and their two supervisor colleagues was mostly invoked. I refer to the election of 1892. And I say, Mr. President, without fear of contradiction by any man upon this floor, that had the Sheriffs of the Black Belt wavered at that time, instead of having enthroned in the Governor's chair of this State a man whose integrity, honesty and courage set him above many of his predecessors, the peer of all, the inferior of none, we would have had someone else. The great party of white supremacy in this country would have melted away, and a mongrel crowd would have administered the affairs of the State in Alabama, and we would have never had the bright recollection of the record of the administration of the gentleman from Montgomery.

Mr. President, it was the Sheriffs that did this. We have been charged in the county that I have the honor to represent, with being a little careless with election figures and in view of the fact that those charges of carelessness had been made against us prior to 1892, at the time that the gentleman was a candidate for election to the office of Governor of this State, there were some rumors that messages were sent to Dallas county, and to her neighbors, these Black Belt counties, that for fear of a mistake there would not be any hurry in announcing the result of the election. Now the acts of the Sheriffs on those occasions, and on subsequent occasions has caused my people to fall under the ban of suspicion. We have actually been charged with engaging in fraudulent practices in the matter of elections, but there never has been a man, and there is not a man in this Convention, that has ever refused to accept the benefits of whatever little irregularities that might have occurred. But we have been condemned in the Northern press.

MR. KIRKLAND—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. KIRKLAND—The gentleman has spoken ten minutes.

MR. REESE—I desire to say that this is not an amendment that I am discussing, it is a motion to reconsider.

MR. KIRKLAND—I understand the rule applies to his case.

THE PRESIDENT—The Chair will examine the resolution passed on yesterday, and rule upon the point of order.

MR. JONES (Montgomery)—I move that unanimous consent be given that the gentleman's time be extended.

MR. REESE—I object, Mr. President to the extension of any one's time.

THE PRESIDENT—The motion is not in order at this time. The Chair will rule upon the point of order made by the gentleman from Dale as soon as he examines the resolution.

MR. CHAPMAN—I would suggest that the gentleman speak on while the Chair is examining the question.

THE PRESIDENT—In the opinion of the Chair the rule is confined to debates upon amendments and that it does not apply to this case.

MR. REESE—Mr. President, up to the time that I came to this convention, from my intimate association with this class of citizens that have been so bitterly fought here, I had the idea they were a very clever set of fellows. I thought that the sheriffs of Alabama were about as honest and patriotic a set of men as the other citizens of Alabama. Some how in Dallas County they have been about the most popular citizens we have had. They have been as good citizens as we have had, and there has been a great flourish of trumpets here, and a whangbanging of drums, about the great evils existing in this State. Why, Mr. President, it is almost like a phonographic reproduction of the performances in the north, criticizing the way we ought to run our government here in Alabama, and, Mr. President, I regret to see where this thing comes from. I see no pressing necessity to adopt any radical legislation to force sheriffs to perform their duty. In my restricted field of observation I have seen no cause for that.

This convention will pardon me for a home reference, but I desire to refer to the last three sheriffs of my county. At a crucial time in the period of this State, when gentlemen who fought under the flags of Democracy and called themselves Democrats, when they allied themselves with the enemies of the white supremacy in this country, in 1896, and at other times, the sheriffs of this State have been brave enough to turn their guns on them, just like they have on the negro party parading under their own proper flag, and in their proper uniform. Mr. President, I have seen the sheriff in my county in 1892, in the fall election, drag the United States Marshal from the booth and keep him from inter-



fering with an honest count in that election. I have seen that man's successor and have helped to undress the sheriff of Dallas County, when he was wounded by four wounds, just received in the discharge of his duty. The last sheriff of Dallas County, a man by the name of Lumpkin, arrested a desperado, or surrounded the house where this desperado and others were, and in the attempt to arrest that man, the sheriff was shot four times, seriously, and at one time his life was thought to be in danger. With the blood dripping from those wounds, Mr. President, and at a time when that posse was enraged almost beyond control, and sought to take the life of that prisoner that they had just taken from that house and arrested under a charge of shooting the sheriff, that great man, the Sheriff of Dallas County, a man that belongs to the class that is being fought and abused in this Convention, turned to that posse and said he would kill any man that interfered with the life of that prisoner. That he was going to put him in jail, and he did put him in jail. It has not been two months ago since I attended the funeral of an officer, a deputy sheriff of Dallas County, who had been shot by a felon he was undertaking to arrest. In a few days after that, with all the excitement that was pending against that man, the sheriff of Dallas County arrested that man and he is safely confined in the jail today, awaiting his trial.

MR. GILMORE—I would like to call the gentleman's attention to the fact that the sheriff of Dallas County did not arrest that man.

MR. REESE—I desire to call the gentleman's attention to the fact that I did not say the sheriff did arrest him.

MR. GILMORE—I understood it so.

MR. REESE—I said he was arrested and put in jail and that he will be there until he is tried. I do not desire to quibble about words.

MR. GILMORE—I understood the gentleman to say that the sheriff arrested him, and the sheriff of Dallas County did not put him in jail.

MR. REESE—The man was arrested in Clarke County, I desire to state for the satisfaction of the gentleman. I don't suppose anybody else is interested in it, that this prisoner was arrested at Grove Hill.

MR. GILMORE—The negro gave himself up.

MR. REESE—The negro was taken charge of by the sheriff of Dallas County at Thomasville, but he was put in jail by the sheriff.

Now, just in conclusion, I want to say that these sheriffs have stood up to the Democratic party, and it is to the Democratic party that I make this appeal. We have had to do things in the Black Belt, and as I have said, even the holier than thou gentleman from North Alabama has never refused to profit by these irregularities. We have had to do those things for which we have been commended, in a quiet way, and slandered in the North. We want relief from those conditions. We plead with the Democrats of this Convention for relief from a system that compels us to raise our boys up under a system of elections that is bound to corrupt. Mr. President, our boys are being corrupted and we ask you in their names, to help us to reform the suffrage. We ask this Convention to give us the plan that a wise and able committee have recommended to this Convention, under which it may be possible to teach our boys to be honest in all things, and under which we may teach our boys that the laws ought to be obeyed.

THE PRESIDENT—The gentleman's time has expired.

MR. BEDDOW—I for one, am tired of this conglomerated mass of heterogeneous eloquence. There is no man who obeys the laws that ought to be afraid of any hearing, and I move that the motion of the gentleman from Dallas be laid on the table.

Upon a vote being taken, a division was called for, and by a vote of seventy-four ayes and twenty-three noes the motion to reconsider was tabled.

MR. SENTELL—I desire to ask unanimous consent to introduce a resolution.

Resolution No. 218.

Whereas, as tomorrow, July 4th, is a National Holiday, and

Whereas, many of the members of this Convention desire to observe the same with their families and friends at home, therefore be it resolved that when this Convention adjourns at 6 o'clock this afternoon it stands adjourned until 9:30 o'clock next Friday morning.

MR. SENTELL—In order to get the sense of this Convention upon the question of adjournment, I ask for a suspension of the rules and that the resolution be put upon its passage.

MR. REESE—I move to lay that on the table.

THE PRESIDENT—A motion to suspend the rules cannot be laid upon the table.

MR. REESE—I call for a ye and nay vote.

THE PRESIDENT—The question is, is the call sustained.

The requisite number did not rise and the call was not sustained.

Upon a vote being taken the rules were suspended.

MR. BEDDOW—I move to amend the resolution by adjourning until Monday at 12.

MR. O'NEAL—I move to lay that amendment on the table.

MR. SENTELL—I move that the amendment of the gentleman from Jefferson be laid on the table.

The motion to table was carried.

MR. SENTELL—I move that the resolution be placed upon its final passage.

MR. REESE—I move to table the resolution.

MR. REESE—I demand the ayes and noes.

THE PRESIDENT—The ayes and noes are demanded, the question is, is the call sustained.

The requisite number not rising the call was declared to be not sustained.

A vote being taken, a division was demanded, and by a vote of thirty-nine ayes and sixty-four noes, the motion to table was lost.

THE PRESIDENT—The question recurs on the motion of the gentleman from Crenshaw.

MR. CUNNINGHAM (Jefferson) — I desire to offer an amendment.

MR. PETTUS—I move the previous question and the adoption of the resolution.

The amendment was read as follows:

“Provided that no per diem be allowed to the members or officers of this Convention.”

MR. REESE—I desire when I can be heard to say a word on the adoption of this amendment to the resolution.

There are 155 of us here, and I doubt whether there are five of us that observed the fourth of July last year. We were working for ourselves, or probably for somebody else. We are now working for the State of Alabama, at the great compensation of \$4 a day, but we were all glad to get the job at that price. Now, Mr. President, the Legislature thought we were going to get through with our business here in fifty days and they expected if we could not do that, that we would do the best we could, and I submit that it is not in good faith for this convention to adjourn. I will ask the Secretary to read the resolution, to see the reasons that are given there.

The resolution was read as follows:

"Whereas, tomorrow, July 4th, is a National Holiday, and whereas many of the members of this Convention desire to observe the same with their families and friends at home, therefore be it resolved that when this Convention adjourns at 6 o'clock this afternoon it stand adjourned until 9:30 o'clock next Friday morning."

The amendment was read as follows:

"Provided that no per diem be allowed to the members or the officers of this Convention."

MR. REESE—Now we are asked to adjourn this Convention, for what purpose? In order that we may be permitted to observe the fourth of July with our families at home. Gentlemen, I do not believe that there are one-tenth of the members of this Convention that ever have observed the fourth of July with their families at home, and probably they were not three blocks from their house either. Mr. President, if you are going to adjourn at all, let's put it on some higher ground than the one given there. The courts in this country do not shut up on the fourth of July. If we have got any private business to attend to, we never let the fourth of July interfere with it. The people of Alabama are getting impatient for this Convention to do the work for which it was sent here, and I think we will make a mistake to adjourn for any reason, and especially for the reasons stated in this resolution.

MR. CUNNINGHAM — I desire to say that I offered this amendment, that it is not a joke, and not in any spirit of buncombe. I believe that this Convention should, with propriety observe the National holiday, the natal day of our independence, but as a simple matter of justice, I do not believe that the tax payers of the State ought to pay us for the exercise of this patriotism. I voted against adjournment and against the suspension of the rules, because I thought that we should remain in session and do the business for which we have been elected. Now, as the majority of the Convention seemed determined to observe this holiday I submit as a matter of simple justice, that we should do it at our own expense and not at the expense of the tax payers of the State of Alabama. That is the proposition that is up to us on this amendment, and I sincerely hope that it will be adopted.

MR. LEIGH—I call for the previous question on the resolution and amendment.

A vote being taken the main question was ordered.

MR. PILLANS—I call for the ayes and nays.

The call for the ayes and nays was sustained.

THE PRESIDENT—The Chair will state for the benefit of the members that the resolution is that the Convention is to adjourn until Friday after 4th of July; the amendment of the gentleman from Jefferson is that the members draw no per diem.

The result of the roll call was as follows :

### AYES

Messrs. President,	Heflin, of Chambers,	O'Rear,
Ashcraft,	Heflin, of Randolph,	Palmer,
Banks,	Henderson,	Parker (Cullman),
Barefield,	Hinson,	Parker (Elmore),
Beddow,	Hodges,	Pettus,
Bethune,	Hood,	Pillans,
Blackwell,	Inge,	Pitts,
Bowne,	Jackson,	Reese,
Bunett,	Jenkins,	Reynolds (Chilton),
Burns,	Jones, of Bibb,	Robinson,
Carmichael, of Colbert,	Jones, of Hale,	Rogers (Lowndes),
Carmichael, of Coffee,	Jones, of Montgomery,	Sanders,
Chapman,	Jones, of Wilcox,	Sanford,
Cobb,	Kirk,	Searcy,
Cofer,	Kirkland,	Selheimer,
Coleman, of Greene,	Knight,	Sentell,
Coleman, of Walker,	Kyle,	Sloan,
Cornwall,	Leigh,	Smith (Mobile),
Craig,	Lowe, of Jefferson,	Smith, Mac. A.,
Cunningham,	Lowe, of Lawrence,	Smith, Morgan M.,
Davis, of Etowah,	Macdonald,	Sorrell,
Dent,	McMillan (Wilcox),	Spears,
Duke,	Malone,	Spragins,
Eley,	Martin,	Stoddard,
Eyster,	Maxwell,	Tayloe,
Espy,	Merrill,	Waddell,
Ferguson,	Miller (Marengo),	Walker,
Fletcher,	Miller (Wilcox),	Watts,
Foster,	Mulkey,	Weakley,
Gilmore,	Murphree,	Weatherly,
Glover,	NeSmith,	White,
Grant,	Norman,	Whiteside,
Greer, of Calhoun,	Norwood,	Williams (Barbour),
Greer, of Perry,	Oates,	Wilson (Clarke),
Haley,	O'Neal (Lauderdale),	
Harrison,	Opp,	
TOTAL—105.		

### NOES

Bartlett,	Bulger,	Carnathon,
Beavers,	Byars,	Davis, of DeKalb,
Brooks,	Cardon,	Foshee,

Graham, of Montgomery,	Long, of Butler,	Rogers (Sumter),
Howze,	Moody,	Stewart,
Locklin,	Phillips,	Williams (Marengo),
Lomax,	Porter,	Winn.
TOTAL—21.		

## ABSENT OR NOT VOTING

Altman,	Howell,	Reynolds, of Henry,
Almon,	King,	Samford,
Boone,	Ledbetter,	Sollie,
Case,	Long, of Walker,	Thompson,
deGraffenreid,	McMillan, of Baldwin,	Vaughan,
Fitts,	Morrisette,	Willet,
Freeman,	O'Neil, of Jefferson,	Williams (Elmore),
Graham, of Talladega,	Pearce,	Wilson (Washington).
Grayson,	Proctor,	
Handley,	Renfro,	

During roll call.

MR. BURNS—I rise to a point of information, I did not vote, I want to ask for information so I can vote.

THE PRESIDENT—The gentleman can be recorded, how does the gentleman wish to vote.

MR. BURNS—I understood the reading of the resolution to include the officers and employees—

THE PRESIDENT—The matter is not open for discussion; does the gentleman wish to vote aye or no.

MR. BURNS—I vote aye.

MR. SANDERS—If I am in order, I now move to table the whole business to adjourn and the amendment offered by the gentleman from Jefferson, and on that I call for an aye and no vote.

THE PRESIDENT—It seems to the Chair that a motion to table is not in order after the previous question has been ordered. The previous question has been ordered on the resolution and amendment.

MR. ROGERS (Sumter)—On the main question, whether we adjourn or not, I call for the ayes and noes.

The call for an aye and no vote was sustained, and the roll call resulted as follows:

## AYES

Cofer,	Davis, of DeKalb,	Ferguson,
Craig,	Eyster,	Gilmore,

Harrison,	Maxwell,	Rogers (Lowndes),
Heflin, of Chambers,	Miller (Marengo),	Sentell,
Heflin, of Randolph,	Mulkey,	Sloan,
Henderson,	Norman,	Smith, Mac A.,
Hodges,	Norwood,	Spears,
Howze,	Oates,	Tayloe,
Jackson,	O'Neal (Lauderdale),	Waddell,
Jenkins,	Opp,	Watts,
Jones, of Montgomery,	Parker (Cullman),	Weakley,
Jones, of Wilcox,	Pettus,	White,
Kirk,	Pitts,	Whiteside,
Ledbetter,	Reynolds (Chilton),	
Total—41.		

## NOES

Messrs. President,	Fletcher,	Miller (Wilcox),
Banks,	Foshee,	Moody,
Barefield,	Foster,	Murphree,
Bartlett,	Glover,	NeSmith,
Beavers,	Grant,	O'Rear,
Beddow,	Greer, of Perry,	Palmer,
Bethune,	Greer, of Calhoun,	Parker (Elmore),
Blackwell,	Haley,	Pillans,
Brooks,	Hinson,	Porter,
Browne,	Hood,	Proctor,
Bulger,	Inge,	Reese,
Burnett,	Jones, of Bibb,	Robinson,
Burns,	Jones, of Hale,	Rogers (Sumter),
Byars,	Kirkland,	Sanders,
Cardon,	Knight,	Sanford,
Carmichael, of Colbert,	Kyle,	Searcy,
Carmichael, of Coffee,	Leigh,	Selheimer,
Carnathon,	Locklin,	Smith (Mobile),
Chapman,	Lomax,	Smith, Morgan M.,
Cobb,	Long (Butler),	Spragins,
Coleman, of Greene,	Long (Walker),	Stewart,
Cornwall,	Lowe (Jefferson),	Studdard,
Cunningham,	Lowe (Lawrence),	Walker,
Davis, of Etowah,	Macdonald,	Weatherly,
Dent,	McMillan (Wilcox),	Williams (Barbour),
Duke,	Malone,	Williams (Marengo),
Eley,	Martin,	Wilson (Clarke),
Espy,	Merrill,	Winn,

Total—85.

## ABSENT OR NOT VOTING

Altman,	Boone,	deGraffenreid,
Almon,	Case,	Fitts,
Ashcraft,	Coleman, of Walker,	Freeman,

Graham, of Talladega,	Morrisette,	Sollie,
Graham, of Montgomery,	O'Neill (Jefferson),	Thompson,
Grayson,	Pearce,	Vaughan,
Handley,	Phillips,	Willet,
Howell,	Renfro,	Williams (Elmore),
King,	Reynolds (Henry),	Wilson (Wash'gton).
McMillan (Baldwin),	Samford,	

MR. WILLIAMS (Marengo)—I ask unanimous consent to introduce a resolution to be referred to the Committee on Rules.

MR. BEDDOW—I object. The gentleman's name will be called presently, and he will have an opportunity to introduce it.

MR. SMITH (Mobile)—I have a report to introduce from the Committee on Rules, as a substitute for Resolution 205, introduced by Mr. Reese of Dallas.

The Committee on Rules reports as a substitute for Resolution No. 205, introduced by Mr. Reese of Dallas the following resolution:

Resolved, That subdivision 6 of rule 22 be amended so as to read as follows:

6. Call of the roll in alphabetical order for the introduction of resolutions, memorials, petitions and ordinances, and their proper reference. But if the roll call is not completed by 10:30 o'clock of any day the Convention shall at that hour proceed with the next order of regular business.

Resolution No. 205, by Mr. Reese:

Whereas, But little time of this Convention is consumed by the regular call of the roll for the introduction of ordinances, resolutions, etc., and

Whereas, Much unnecessary consumption of time is had in explaining and obtaining unanimous consent or suspension of the rules for the introduction of ordinances, resolutions, etc., therefore

Be it resolved, first that hereafter the roll call for the introduction of ordinances, resolutions, etc., shall not be suspended except by unanimous consent.

Second, that no resolution or ordinance shall be introduced at any other time except by unanimous consent.

Third, it will be deemed very bad taste on the part of any member taking up the time of the Convention in asking said consent, except in dire and pressing emergency.

MR. SMITH (Mobile)—That rule is amended simply to conform with the change of the hour at which the Convention meets.



Formerly the roll call was until 11 o'clock, but as the Convention meets half an hour earlier we put the roll call a half hour earlier also. I move the adoption of the report.

A vote being taken the report of the Committee on Rules was adopted.

MR. SMITH (Mobile)—The Committee on Rules desires to report Resolution No. 208.

The Committee on Rules reports as a substitute for Resolution No. 208, introduced by Mr. Cornwell of Jefferson, the following:

Resolved, That rule 55 be amended so as to read as follows:

That the rules of the Convention shall not be suspended except by a two-thirds vote of every delegate present, provided a quorum must vote; provided further, that the rule limiting debate upon ordinances reported by committees shall not be suspended except by unanimous consent.

Resolution No. 208, by Mr. Cornwell:

Resolved, That the time allowed each delegate for speaking on any one question be and is hereby limited to ten minutes, and that unanimous consent must be obtained to extend time.

MR. SMITH (Mobile)—I move the adoption of that report.

MR. PETTUS—I would like to ask the gentleman from Mobile a question. What difference it makes in the existing rule what the object of the change is?

MR. SMITH (Mobile)—The object of the change is to prevent an extension of the limit for debate, as a mere matter of courtesy, which has been universal up to this time, and the committee thought proper to avoid that if possible.

MR. HEFLIN (Chambers)—Does it not take away the right of one member to yield his time to another?

MR. SMITH—It does not affect that, as I understand it.

MR. HEFLIN (Randolph)—Mr. President, I call for the reading of the resolution again, some of us did not hear it.

The resolution was again read to the Convention.

MR. JONES (Montgomery)—I sympathize as much as any member with the desire to shorten discussions of this body, but there are some things that ought to be discussed, and we ought to remember that no matter who it is that speaks, that he represents a constituency who are entitled to be heard here. Here we are wrapping ourselves up in a network of rules that make the majority absolutely helpless. The majority of this body might

wish to suspend the limit of debate, or the majority wish to lengthen it, and yet they would be in the control of the minority—

MR. DENT—And of one man.

MR. JONES—And of one man, and it seems to me that we are fastening ourselves up, tying our hands, and surrendering the control of this Convention to a minority. I yield as much deference as anybody to the Committee on Rules, but I am tired of that committee coming in here continually in the face of the sentiment of this body and asking us to turn over our power to a minority, and I move to lay the resolution on the table.

MR. PILLANS—I ask that the report be read again, as I did not hear the last part of it.

The report was again read.

A division was called for and the report of the committee was laid upon the table by a vote of 58 ayes and 40 noes.

MR. SMITH (Mobile)—The Committee on Rules desires to report favorably Resolution No. 184.

The clerk read the resolution as follows:

Resolution 184: Resolved, That from and after the passage of this resolution, no per diem will be allowed to delegates of this Convention who are absent, except those granted leave of absense on account of sickness of themselves or members of their families.

MR. SMITH—I desire to ask the adoption of that resolution.

MR. WILLIAMS (Marengo)—On that I call for the ayes and noes.

The call for the ayes and noes was sustained and the result of the roll call was as follows:

#### AYES

Ashcraft,	Coleman, of Greene,	Howze,
Banks,	Cunningham,	Inge,
Barefield,	Dent,	Jones, of Hale,
Bartlett,	Eley,	Jones, of Montgomery,
Beddow,	Espy,	Jones, of Wilcox,
Blackwell,	Ferguson,	Kyle,
Brooks,	Fletcher,	Knight,
Browne,	Foster,	Leigh,
Bulger,	Glover,	Lowe, of Lawrence,
Burns,	Greer, of Perry,	MacDonald,
Carnathon,	Haley,	Malone,
Chapman,	Heflin, of Chambers,	Martin,
Cobb,	Heflin, of Randolph,	Maxwell,
Cofer,	Henderson,	Miller, of Wilcox,

Murphree,	Phillips,	Spears,
NeSmith,	Pillans,	Spragins,
Norman,	Porter,	Stewart,
Norwood,	Rogers, of Lowndes,	Waddell,
Oates,	Rogers, of Sumter,	Walker,
O'Neal, of Lauderdale,	Sanders,	Weakley,
Opp,	Sanford,	Weatherly,
Palmer,	Searcy,	White,
Parker, of Elmore,	Smith, of Mobile,	Whiteside,
Pettus,	Smith, Mac A.,	Williams, of Marengo,

Total—72.

### NOES

Beavers,	Hood,	Pitts,
Bethune,	Jackson,	Proctor,
Burnett,	Jones, of Bibb,	Reese,
Byars,	Kirk,	Reynolds (Henry),
Cardon,	Kirkland,	Reynolds, of Chilton,
Carmichael, of Colbert,	Ledbetter,	Robinson,
Carmichael, of Coffee,	Locklin,	Selheimer,
Cornwall,	Lomax,	Sentell,
Craig,	Long of Butler,	Sloan,
Davis, of DeKalb,	Long, of Walker,	Smith, Morgan M.,
Davis, of Etowah,	Lowe, of Jefferson,	Sorrell,
Duke,	McMillan, of Wilcox,	Studdard,
Eyster,	Merrill,	Watts,
Graham, of Montgomery,	Miller, of Marengo,	Williams, of Barbour,
Grant,	Moody,	Wilson, of Clarke,
Grayson,	Mulkey,	Winn.
Greer, of Calhoun,	O'Rear,	
Hodges,	Parker, of Cullman,	

Total—52.

### ABSENT OR NOT VOTING

Messrs. President,	Graham, of Talladega,	Renfro,
Almon,	Handley,	Samford,
Altman,	Harrison,	Sollie,
Boone,	Hinson,	Tayloe,
Case,	Howell,	Thompson,
Coleman, of Walker,	Jenkins,	Vaughan,
deGraffenreid,	King,	Willet,
Fitts,	McMillan (Baldwin),	Williams, of Elmore,
Foshee,	Morrisette,	Wilson, of Washington.
Freeman,	O'Neill (Jefferson),	
Gilmore,	Pearce,	

Total—31.

MR. SMITH (Mobile)—The committee desires to report favorably Resolution No. 169.

The clerk read the resolution as follows:

Resolution No. 169, by Mr. Williams (Marengo):

Whereas, The Convention has incurred considerable expense in obtaining a stenographic report of the proceedings of the Convention, and whereas, the wisdom of the reports appears more apparent every day, and whereas, as a ready reference the reports are a failure as they are now, and whereas an index would add greatly to the value of the reports;

Now, therefore, Be it resolved by the Convention, that as soon as the Convention shall have adjourned sine die, that the Secretary of State be, and is hereby authorized to contract with some reliable party who shall make a complete index of said reports and shall place the same in each of the volumes of the reports heretofore ordered kept for the use of the State, and shall further cause to be printed in some paper in Alabama the said index, so that those people of Alabama who are preserving the reports may easily obtain a copy of said index for their use and preservation.

MR. SMITH—I desire to move the adoption of the resolution.

A vote being taken the resolution was adopted.

MR. SMITH (Mobile) — On behalf of the Committee on Rules, I desire to report Resolution No. 192, without recommendation.

Resolution No. 192, by Mr. Rogers (Lowndes):

To amend rule 36 so as to read: The ayes and noes shall only be ordered when the call therefor is sustained by fifty delegates.

MR. REESE—Mr. President, I move to lay that upon the table.

A vote being taken the resolution was laid upon the table.

MR. BEDDOW—I ask unanimous consent to introduce a resolution.

MR. WILLIAMS (Marengo)—I object. (Laughter.)

MR. BEDDOW—I will withdraw my objection to your resolution.

MR. WILLIAMS (Marengo)—I will present mine first then. I ask unanimous consent to introduce a resolution.

MR. BEDDOW—I object.

THE PRESIDENT—The clerk will call the roll for the introduction of ordinances, petitions and resolutions.

MR. O'NEAL (Lauderdale)—We adopted a rule fixing the limit at 10:30 a. m.

MR. HEFLIN (Chambers)—But it was after 10:30 when we adopted the changed rule, and it does not apply today.

THE PRESIDENT—In the opinion of the Chair it would not go into operation until tomorrow.

MR. HEFLIN (Chambers)—On yesterday I introduced an ordinance which went over until today. It refers to the election of Sheriff, filling of vacancies to that office, impeachment or removal of the Sheriff. It has been the custom in this Convention, Mr. President, without a single exception, when any delegate has offered a resolution or an ordinance, and has indicated to the President a desire to have it referred to any particular committee—with but one exception, and that was yesterday by the gentleman from Montgomery, who stands guarding on all occasions the report of the Executive Department, and because, forsooth, it has gone through in a manner and is now beyond the reach of this Convention, sits watching ordinances introduced pertaining to that department and he, on yesterday, raised the objection that my ordinance should not be referred to the Committee on Impeachment. One section in that ordinance referred, Mr. President, to the impeachment and removal of the sheriff, and I asked that it be referred to that committee, without seeing the Chairman of that Committee, without knowing how a single member of that Committee stands upon this proposition, I asked that they might consider this ordinance and report it back to this Convention in some shape or other. Ordinances on this line have gone to the Committee on Executive Department, and, Mr. President, they are sleeping there until this good hour. This Convention has never had an opportunity to investigate them or to express its desire concerning them. For that reason I desire this ordinance to go to a Committee that would act upon it and report its action back to this Convention. I did think, Mr. President, and I think now, that it comes with bad taste from the Chairman of that Committee to object to the reference of this ordinance to another Committee and ask that it be referred to his own. I will state that if I were the Chairman of a Committee in this Convention, and any delegate on this floor, no matter how humble and obscure he might be, if he indicated by a suggestion to the Chair that he did not want his ordinance referred to my Committee, I would sit as silent as the tomb. I would not ask, Mr. President, with a display of enthusiasm to have that ordinance referred to my Committee for its action.

MR. COFER—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. COFER—The point is there is nothing before the House.

MR. HEFLIN—I will inform the towering statesman and splendid genius from the County of Cullman, that the ordinance has not yet been referred, and I am now speaking to the subject.

THE PRESIDENT—The Chair will state for the information of the gentleman that when the ordinance was offered on yesterday the hour of adjournment was about reached pending the consideration of the question of reference, the Convention adjourned.

MR. COFER—I make the point of order that a motion to refer to a Committee is not debatable.

THE PRESIDENT—It seems to the Chair that the point of order is well taken.

MR. HEFLIN—I just want to state, Mr. President, in conclusion, that I do not know what the Committee will do——

The point of order was made that hour of 11 o'clock had arrived.

THE PRESIDENT—Point of order is sustained.

MR. JONES (Montgomery)—That leaves the objection in a bad fix, after having heard the gentleman from Chambers. I ask unanimous consent to be allowed to speak in reference to the suggestion that I made to refer it to the Executive Department.

MR. HEFLIN (Chambers)—I raise the point of order that the Chair has already sustained a point of order that the motion is not debatable.

MR. JONES—I ask unanimous consent.

Objection was made.

MR. JONES—I am sorry the gentleman charged us with lack of courtesy, and then is not willing to hear from us.

MR. BROOKS—I desire to call attention to the fact that while a motion to refer is not debatable, yet it is within the power of the President to allow of sufficient debate as to why it should or should not go to a certain Committee to allow him to determine that question. I think if the President will reflect he will see the propriety.

THE PRESIDENT—Will the gentleman refer the Chair to the rule?

MR. BROOKS—There is no special rule.

THE PRESIDENT—The recollection of the Chair is that all ordinances when introduced will be referred without debate.

MR. BROOKS—But it is in the province of the Chair to allow of sufficient debate to see to what Committee it should go.

THE PRESIDENT—It seems to the Chair the question to refer would not be debatable.

MR. JONES (Montgomery)—Then I rise to a question of privilege.

THE PRESIDENT—The gentleman will state the question.

MR. JONES—It has been charged in the debate that the Committee of which I have the honor to be Chairman has been hiding out or pigeonholing resolutions. I have a right to make a statement as to that.

THE PRESIDENT—It does not seem to the Chair that that is a question of personal privilege.

MR. JONES (Montgomery)—Then I make another point: The Chair allowed the gentleman to speak and have all the advantage of debate and never called him to order and I submit under those circumstances if the Chairman has not an equitable right to be heard.

THE PRESIDENT—The Chair did not call the gentleman from Chambers to order and would not call the gentleman from Montgomery to order unless delegates raise the question. Then the Chair is compelled to.

MR. KIRKLAND—I desire to withdraw the objection I interposed to hearing the gentleman from Montgomery.

MR. HINSON—I object to the consideration of the question.

THE PRESIDENT—The question is whether unanimous consent shall be given the gentleman from Montgomery.

MR. JONES—I don't ask it now.

Objection was made.

MR. HINSON—As I understand the rule, it is proper for any delegate to object to the consideration of a question and if two-thirds of the Convention sustain that objection, the question shall be considered no more during the session. I understand that is the parliamentary rule.

THE PRESIDENT—The question now before the Convention is on the reference of the order introduced by the gentleman from Chambers.

MR. JONES (Montgomery)—I move to amend that by referring it to the Committee on the Executive Department.

**THE PRESIDENT**—And the gentleman from Montgomery moves to amend by referring it to the Committee on Executive Department.

**MR. REESE**—I move to lay the amendment on the table.

**MR. LONG (Walker)**—I rise to a point of order. A mere motion to refer to a Committee is not subject to amendment. It is a question which should be left to the President.

**THE PRESIDENT**—It seems to the Chair that when a gentleman moves to refer an ordinance to a special Committee it would be in order for the convention to amend the motion and refer it to some other committee. The point of order is overruled.

**MR. CUNNINGHAM**—I rise to a point of order.

**THE PRESIDENT**—The gentleman will state the point.

**MR. CUNNINGHAM**—Under our rules when a motion is made to refer an ordinance to a Committee other than that Committee to which it should properly go, the question should first come on referring it to the committee to which it naturally would go. Section 29 is as follows: "When motions are made for the reference of a subject to a select committee and a standing committee, the question for the reference to a standing committee shall be first put."

**THE PRESIDENT**—The point of order is overruled.

**MR. HINSON**—I rise to a point of order.

**THE PRESIDENT**—The gentleman will state the point of order.

**MR. HINSON**—As I understand the rule, I objected to the further consideration of the question, and I did it upon authority of Rule 15 of Robert's Rules of Order. My idea in making that objection is that we have discussed this question as long as necessary and the rule reads like this—

**THE PRESIDENT**—The ordinance is not up for consideration now. The only question is the question of reference. The Chair would overrule the point of order.

**MR. REESE**—I move to table the motion of the gentleman from Montgomery.

A vote being taken the motion to table was lost, and a further vote being taken on the amendment of the delegate from Montgomery (Mr. Jones) on a division, there were 64 ayes and 44 noes.

So the amendment was adopted.

A further vote being taken the motion as amended was carried, and the ordinance was referred to the Committee on the Executive Department.



MR. LONG (Walker)—If I am in order I move that the Executive Department be requested to report this ordinance one way or the other and not to let it sleep there and die as all other similar resolutions have done—

THE PRESIDENT—The gentleman will be in order.

MR. JONES (Montgomery)—I insist on my right to speak in behalf of the committee.

THE PRESIDENT—The gentleman is not in order.

MR. JONES (Montgomery)—I yield to the Chair, but at the same time I desire to state it is because of the respect I have for the Chair and not because I think the Chair is right.

THE PRESIDENT—The Chair will state that the ordinance to define and regulate the Executive Department which has been adopted by this body is referred to the Committee on Order, Consistency and Harmony.

MR. O'NEAL—I ask unanimous consent to introduce a short resolution.

THE PRESIDENT—Is there objection?

MR. BURNS—I object. I call for the regular order.

MR. HEFLIN (Randolph)—I move for the regular order, the continuation of the roll call.

THE PRESIDENT—The hour of 11 having arrived, under the rules the roll call will be dispensed with and the secretary will call the roll of standing committees.

This was done, and on the call of the Committee on Schedule, Printing and Incidental Expenses—

MR. HEFLIN (Randolph)—I desire on behalf of my committee to call up a report that I made from the Committee on Schedule, Printing and Incidental Expenses, and ask that it be put on its passage.

THE PRESIDENT—The clerk will read the report to which the gentleman refers.

The report was read as follows:

The Committee on Schedule, Printing and Incidental Expenses have instructed me to make the following partial report, viz:

The committee have audited the accounts hereto attached and find that the State of Alabama is indebted to the Brown Printing Company of Montgomery, Alabama, in the sum of \$255.25. We find that said State is indebted to Marshall & Bruce of Nashville, Tenn. in the sum of \$12.

We also find that said State is indebted to Ed. C. Fowler Company, Montgomery, Alabama, in the sum of \$24.75.

All of the above amounts are for articles furnished the State of Alabama for the use of the Constitutional Convention, and all of the above amounts are itemized as shown by bills hereto attached. Total amount \$302.

And we recommend the payment of the same, all of which is respectfully submitted,

John T. Heflin,

Chairman of Committee on Schedule, Printing and  
Incidental Expenses.

MR. HEFLIN (Randolph)—I move that the report of the committee be adopted and that the President be authorized to draw his warrant in favor of these parties for the amounts there set out.

MR. ROBINSON—Does this require an ordinance to carry it into effect?

THE PRESIDENT—The ordinance has been introduced heretofore and adopted.

MR. LOMAX—My impression is that there has been a change in the rules requiring that the payment of money be done only on a ye and nay vote, and there might be some objection to the payments in these matters unless that the rule is complied with.

THE PRESIDENT—Will the gentleman refer to the rule?

MR. HEFLIN (Randolph)—We passed a resolution a few days ago that no appropriation be made except by a ye and nay vote, and I call for the adoption of this report by a ye and nay vote.

MR. LOMAX—The secretary informs me that the resolution to which I and the gentleman refer is on the calendar and has not been adopted.

MR. HEFLIN (Randolph)—Then this does not require a ye and nay vote, and I withdraw the call.

THE PRESIDENT—As the Chair recollects the yeas and nays are required upon the final adoption of any article or section of the Constitution. The yeas and nays are then taken and spread on the Journal and referred to the Committee on Order, Consistency and Harmony.

Resolution 120 that all resolutions authorizing the payment of any money shall only be adopted by a ye and nay vote has been placed on the calendar, but has not yet been passed.

The special order is the report of the Committee on Taxation.

MR. WHITE—I have an amendment to Section 9.

THE PRESIDENT—There is an amendment pending to Section 9.

MR. WHITE—Then I offer mine as amendment to that amendment.

THE PRESIDENT—Did the gentleman have the floor at the time the gentleman occurred?

THE CLERK—No sir; Mr. Kirk had the floor.

THE PRESIDENT—The gentleman is not in order at this time to offer the amendment. The Chair recognizes the gentleman from Colbert.

MR. KIRK—The amendment which I offered on yesterday afternoon is one which is of great interest to every county in the State. This move of establishing a debt limit for each county, as suggested by the gentleman on yesterday, is an innovation in this State, and should receive the careful consideration of every delegate in this Convention. I believe it is a wise innovation, but the point at which I am driving is to get every delegate on this floor to consider the effect of this innovation and so frame this section of the Constitution that it will not work a disadvantage to the county instead of an advantage as we propose and suppose. Now it is very probable that every county in the State of Alabama will at some day or other find it necessary to create a debt to the extent of the debt limit. When that has been done, that county will not be able to create a debt for any purposes however great the needs of that county may be. If you make that limit three or five per cent when the county has created a debt that comes up to that limit, then she is unable to create and other debt. Take my county that has already exceeded a limit of 5 per cent and if her court house and every bridge in the county were swept away, we would be unable to raise money to replace those bridges or to rebuild the court house. Now I submit to the gentleman that would be a very bad condition for any county to get into, with her court house destroyed, her bridges swept away and unable to create a debt by which she could replace those improvements. Then I think it is wise to adopt the amendment I offer providing in cases of that kind where the county has created a debt up to the amount of the limit that it may when necessary, increase that indebtedness for the purpose of erecting buildings and county bridges. It seems to me that will address itself to the attention of every delegate here who feels an interest in the welfare of his county. A provision of that kind should be made. None of us know when the other counties of the State will want to increase their debt to the extent of the debt limit. Perhaps this question weighs on my mind more heavily from the

very fact that my county is already in that condition. Not only that, but as I stated on yesterday, we are unable even to pay the interest on those bonds and we have here today representatives of the bondholders who are desiring and working to get this Convention to increase the tax rate in my town and county in order to pay off those debts. You can see the condition we are in and other counties should profit by that in my judgment.

MR. WHITE—Will the gentleman allow me a question?

MR. KIRK—Yes, sir.

MR. WHITE—Should your county have the opportunity to go more in debt than now?

MR. KIRK—Yes; if the bridges or the court house should be destroyed we could issue county warrants and place those interest drawing warrants with our own bankers or some one in the county and raise sufficient money to replace the bridges and rebuild the court house.

MR. O'NEAL—Could you get anyone to advance money to your county when you admit your county has failed to pay interest on its public debt?

MR. KIRK—We can for the reason that the Constitution or the report of the Committee now before the Convention has provided for the levy of one-fourth of one per cent special tax to cover those expenses.

MR. O'NEAL—Would not that one-fourth of one per cent be sufficient to enable you to rebuild a court house if destroyed?

MR. KIRK—No, sir; it would not be one-fourth enough to build a court house. It would take two or three years.

MR. O'NEAL—Could you not issue warrants and pay it as the money is collected under that tax?

MR. KIRK—Not under that provision.

MR. O'NEAL—Why not?

MR. KIRK—Because it says when the debt limit has been reached the county shall not create any further indebtedness. That is the trouble. Whenever we reach the debt limit the county cannot create any further debt.

MR. KYLE—Will the gentleman permit me an interruption?

MR. KIRK—Yes, sir.

MR. KYLE—How did you create that debt of \$200,000?

MR. KIRK—The debt was created for the purpose of building roads.

MR. KYLE—What sort of roads?

MR. KIRK—Macadamized roads and very much against my opposition. Our representative succeeded in getting a measure through the legislature authorizing the issue and sale of \$100,000 of bonds. That was submitted to a vote of the people and about one-third of the voters of the county went out and voted on that occasion. They had a small majority. Two years from that they voted upon the issue of another hundred thousand and the people voted that and I will state if it were submitted to the people of my county they would still vote another hundred thousand dollars.

MR. WHITE—I offer an amendment.

The amendment was read as follows:

Amend Section 9 so as to read as follows: After the ratification of this Constitution no county shall become indebted in an amount greater than 5 per centum of the taxable property thereof; and in estimating the amount of said indebtedness, its then existing debts shall be included.

THE PRESIDENT—The question is on the amendment of the delegate from Jefferson to the amendment of the delegate from Limestone to the report of the Committee.

MR. WHITE—It has occurred to me that the main good to be accomplished is to increase the credit of the towns and to do that the law ought to be very clear and unambiguous. Of course we sympathize with the conditions in Colbert County, but all the other counties in Alabama cannot afford to have their credit impaired and destroyed by those local conditions. In fact, I doubt very much whether the county of Colbert even, if it had the privilege under the law of increasing the debt, could I do it. I do not see why anyone would be justified in buying bonds or the securities offered.

MR. KIRK—Can I ask the gentleman a question?

MR. WHITE—Yes.

MR. KIRK—Could not the County Commissioners issue warrants to pay for a court house and could it not pay for it out of the special tax to be levied of one-fourth of one per cent.

MR. WHITE—They can do that now.

MR. KIRK—They can't do it under this section, because it says when the debt limit has been reached the county shall create no further debt.

MR. WHITE—I doubt very much if you can get anyone to take your warrants.

MR. KIRK—There is a special tax to be levied for that purpose.

MR. WHITE—The gentleman might after the section is agreed upon except Colbert from it, as far as that is concerned, but my idea is this, that this ought to be very clear and couched in such language that it cannot be misunderstood. My amendment provides that counties may become indebted to the extent of 5 per cent of the value of the property of the county, but when you estimated that 5 per cent, it must include all past indebtedness.

I think 5 per cent. is as small amount as we should fix. It is as small as in any other State except one, and I am not sure but what it is as small as any other State. I know in Jefferson, with our great sewerage system upon which we are just entering we may need 5 per cent. and I take it most other counties may under certain circumstances need it. As I do not wish to discuss the matter further and it has been discussed sufficiently, I move the previous question.

MR. COLEMAN (Greene)—Can I make a request of the gentleman?

MR. WHITE—Yes, sir.

MR. COLEMAN (Greene)—I would like to hear the amendment read.

The amendment was read.

MR. COLEMAN (Greene)—My objection to the amendment is that part of it which says the existing indebtedness shall be included.

MR. WHITE—Including the existing indebtedness to make up the 5 per cent.

MR. COLEMAN (Greene)—Where the section reported by the committee is that it shall not apply, the 5 per cent. to indebtedness that has already been created. You antagonize that provision?

MR. WHITE—Yes. The point is this, there is not a county in the State but what is indebted to some extent now, some greater and some less, and if you are to absolutely eliminate its present indebtedness and not consider that at all, when you go to estimate the amount it shall be allowed to create, it may make it 9 per cent. The county may be now in debt like Colbert, 5 per cent. and then you add 5 more which would make 10 per cent. if the gentleman from Green is right in his construction, and I am inclined to think he is. My amendment limits it to 5 per cent. that is, with the debt now existing and the debt to be created, that

they shall not exceed 5 per cent. Whether you like it or not, that makes it plain.

MR. O'NEAL—Can I ask the gentleman a question?

MR. WHITE—Yes.

MR. O'NEAL—Is it your purpose to repudiate any debt now in excess of 5 per cent?

MR. WHITE—How could we repudiate it when the Federal Constitution protects it?

MR. O'NEAL—We don't want to leave ourselves in uncertainty.

MR. WHITE—There cannot be any uncertainty. Section 10 of Article I of the Federal Constitution says no State shall pass any law impairing the obligation of a contract. As I understand this amendment has gone as far as an amendment can go. That we can offer no other amendment and I will ask the previous question on the adoption of the section with the amendment. That will give the chairman of the committee an opportunity to discuss it.

MR. CARMICHAEL (Colbert)—I will ask the gentleman to withdraw that motion.

MR. WHITE—I will if you will renew it.

MR. O'NEAL—I ask the gentleman to withdraw it as the gentleman from Greene was preparing to make some remarks.

MR. WHITE—I have no objection to yielding to the gentleman from Colbert, and then the gentleman from Greene can discuss it and renew the motion.

MR. CARMICHAEL (Colbert)—All I desire to say is I hope the members of this Convention will not become fixed in their opinion about this matter as to prevent the relief that Colbert county needs. The gentleman from Colbert (Mr. Kirk) has referred to the financial conditions of our county. We are now indebted in a bonded debt to the amount of \$200,000. This bears interest part of it at 5 per cent. and the other part at 6, which requires about \$11,000 to pay the annual interest. It might be that we would need a new court house. I prefer the amendment of the gentleman from Colbert, because that provides that any county may incur an indebtedness for ordinary county purposes, that is for jails, court houses, poor houses, etc., but not for extraordinary purposes, such as the building of turnpikes or things of that kind. Now I can see no objection to allowing the county, even a county in the condition that Colbert is in, to contract indebtedness if that county can find those who are willing to enter into a contract with them for these ordinary and necessary county purposes. It would

be absolutely impossible for our county to contract a debt of any kind or for any amount in the condition we are now. We already have an indebtedness of \$200,000, which is more than 5 per cent. of the assessed value of our property. Now I submit to the members of this Convention that it would be absolutely impossible for us to incur a debt of any kind.

MR. DENT—Can I ask the gentleman a question?

MR. CARMICHAEL—Yes, sir.

MR. DENT—As I understand the amendment of the gentleman from Jefferson that would have it as it now stands at five per cent?

MR. CARMICHAEL—Yes, sir.

MR. DENT—Would that help your county? As I understand your taxable property is less than four million.

MR. CARMICHAEL (Colbert)—No, sir; it would not help us. The amendment of the gentleman from Colbert which allows further indebtedness for the building of county jails and bridges, etc., will.

MR. COLEMAN (Greene)—Will the gentleman permit me a question?

MR. CARMICHAEL—Yes, sir.

MR. COLEMAN (Greene)—If you will turn to Section 5, commencing at line 6, it reads: "provided further, that to pay any debt or liability now existing against any county incurred for the erection, construction and maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, or roads, any county may levy and collect" special taxes. Does not that cover your case.

MR. CARMICHAEL—I think not.

MR. COLEMAN (Greene)—Why not?

MR. CARMICHAEL—For this reason: This says, provided further, that to pay any debt or liability now existing against any county, incurred for the erection, construction and maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges or roads, any county may levy and collect such special taxes not to exceed a rate of one-fourth of one per centum.

Now that is in addition to the five mills; but that has to be levied upon the assessed value, which, in our county, amounts \$3,800,000. That has to be levied on the assessed value. But there is a subsequent section which says that no county shall be



indebted in an amount greater than five per cent. of the assessed value, which I think controls this section.

MR. COLEMAN—With your permission, I will reply when you get through.

MR. CARMICHAEL—If this Convention is willing to adopt the amendment of the gentleman from Colbert, very well; but if not we would like to have an opportunity of offering amendment to provide that this amendment shall not apply to the county of Colbert and then we would be perfectly willing to the amendment.

MR. WHITE—Will the gentlemen permit me just a moment? A number of gentlemen wish further to discuss this matter and I therefore release the gentleman from renewing the call for the previous question.

MR. COLEMAN (Greene)—If the position of the gentleman from Jefferson is correct, that is, that the State shall pass no ex post facto law interfering with existing contracts, then his amendment is wholly unnecessary. What field has it to operate in. It says you shall take into consideration the existing indebtedness. The only effect it will have will be to prevent a county from contracting one dollar of liability if the existing indebtedness has already reached an extent to equal five per cent. Now, the purpose of that provision by the committee was this: We do not wish to be placed in the attitude of repudiating honest debts which had been contracted by counties issuing their bonds putting them on the market and selling them for a valuable consideration. We thought it right and proper where counties had contracted these debts and had issued bonds and had received value received for them that those counties should be allowed to pay those debts. Otherwise you would be committing a fraud upon bona fide purchasers of bonds because in the absence of this provision, and heretofore there has been no limit upon the power of a county to contract a debt, it could issue bonds ad libitum as mentioned by the delegate from Colbert. The provision is simply one in the interest of honesty and the performance of bona fide contracts. But we wish to put creditors upon notice hereafter when you buy bonds from counties of this State you must do so with the understanding that the county has no authority to issue an indebtedness beyond a certain amount. That is fair dealing with the public and that is the reason that provision is put there.

MR. KIRK—Can I ask the gentleman a question.

MR. COLEMAN—Yes, sir.

MR. KIRK—In order that I may bring out more fully the point made by my amendment this says that no county shall become indebted to an amount greater than five per cent of the

property. Colbert having created a greater debt could not create any other debt for any purpose.

MR. COLEMAN (Greene)—I will answer you when you get through.

MR. KIRK—Another section reported, but not adopted provides that a county may levy a special tax of not more than one-fourth of one per cent. to provide for certain expenses for county buildings. If Colbert could create a further debt by this levy of one-fourth of one per cent. she could pay it off in four or five years.

MR. COLEMAN—Do you say that Section 5 has not been adopted?

MR. KIRK—No, sir; that is not yet adopted. It was passed.

MR. COLEMAN—Then as it has not yet been passed, I will make no further argument other than to say it would require time and study to answer the question, and I do not feel like giving an impromptu answer as to whether the provision for a special tax would be controlled by the general provision. I am inclined to think the special tax would stand as against the general law, but as to that, I would not undertake to inform the Convention. But, as I have said, the counties have issued bonds when there was no limit upon their power to contract indebtedness, and they have sold those bonds in the market, and certainly to insure fair dealing with their creditors this provision should stand and let the counties have the power to pay the debts they have contracted, but give warning to the creditors hereafter that they must take notice when they buy bonds issued by counties that the county has no authority to create indebtedness beyond a certain limit, to-wit, 5 per cent.

MR. FOSTER—It seems to me that the objection raised by the gentleman from Colbert might be met and at the same time have this provision intact. As I understand the intention of that section is to prevent any bonded indebtedness in excess of 5 per cent, and that might be met by providing that it shall not apply to debts which mature within twelve months after their creation. In that way the counties might meet these temporary debts by a special tax which no doubt will be provided for by this Convention. I intended to offer an amendment to that effect, but understand it would not be in order now, and I merely wish to call the attention of the Convention to that way out of the difficulty, as it seems to me the county of Colbert might, instead of issuing bonds, issue its warrants maturing within twelve months, which could be extended at the end of that time, and make payments of that by special tax, which, no doubt, the Convention will provide for.

A vote being taken, the amendment of the delegate from Jefferson was lost.

MR. SANDERS—I desire to offer a substitute for the whole section.

The substitute was read as follows:

No county shall become indebted in an amount greater than 5 per centum of the taxable value of the property thereof; provided, this limit shall not apply to any existing indebtedness in excess of such 5 per centum which has already been created or authorized by now existing law to be created.

MR. COLEMAN—So far as I am concerned, I have no objection to that. The only difference is the insertion of the word "limitation" instead of "section."

MR. SANDERS—It changes some other provisions.

MR. COLEMAN—But the meaning is the same.

MR. HARRISON—I rise to a point of order. If I understand that correctly, that very provision was voted down yesterday.

MR. WADDELL—It was 3 per cent and not 5 that was voted down.

THE PRESIDENT—The point of order is not well taken.

MR. HARRISON—It was more of an inquiry than of a point of order.

MR. WHITE—Under that provision, is it possible to create a debt, considering past and future obligations that would amount to more than 5 per cent?

MR. SANDERS—The meaning of the substitute is simply this, if a county is already indebted in excess of 5 per cent. it cannot create any further debt, but if it is not indebted to that extent, the indebtedness may be increased to 5 per cent hereafter.

MR. WHITE—Including the past indebtedness?

MR. SANDERS—Yes.

MR. WHITE—Could Colbert County create any other debt?

MR. SANDERS—If they are up to 5 per cent they can't.

MR. O'NEAL—You do not mean to say they can create 5 per cent in addition to the indebtedness they now owe?

MR. SANDERS—No, sir; the total indebtedness can only go up to 5 per cent.

MR. HARRISON—I am opposed to that amendment, because I think there should be a different amount fixed as the limit. I have no particular objection to the phraseology of this over the other proposition; it is tweedledum and tweedledee. But I do hope the delegates will not consent to that 5 per cent. The motion to strike out that proposition and insert three only failed by a majority of two. I hope the Convention will not go over 3 per cent. Vote this proposition down, and we have prepared an amendment fixing it at 3 1-2. I think that is not only reasonable, but it is as much as any county in Alabama or any other State ought to want to incur.

A vote being taken on a division, the substitute was lost by 32 ayes and 63 noes.

MR. HARRISON—I offer an amendment.

The amendment was about to be read.

MR. HARRISON—Just wait a second. Some gentlemen seem to prefer the form of this substitute and I will change my amendment.

The amendment was changed and read as follows:

No county shall become indebted in any amount greater than 3 1-2 per cent of the taxable value of the property thereof; provided, this limitation shall not apply to any existing indebtedness in excess of such three 1-2 per centum which has already been created or authorized by now existing law to be created.

MR. O'NEAL—I move to amend by striking out 3 1-2 and substituting four.

The amendment was declared out of order.

MR. WATTS—I want to ask the gentleman from Lee a question. I want to know what he means by the expression "now existing law."

MR. COLEMAN—Some bonds have been authorized, but not issued, and this would cover that.

MR. WATTS—I am satisfied.

MR. O'NEAL—I move to table the substitute.

The ayes and noes were called for and sustained and the roll resulted as follows:

#### AYES.

Beddow,	Brooks,	Carmichael, of Coffee,
Barefield,	Burnett,	Carnathon,
Bethune,	Cardon,	Cobb,
Blackwell,	Carmichael, of Colbert,	Coleman, of Greene,

Cornwall,  
Cunningham,  
deGraffenreid,  
Eyster,  
Ferguson,  
Foshee,  
Foster,  
Glover,  
Graham, of Montgomery,  
Grant,  
Grayson,  
Greer, of Calhoun,  
Haley,  
Heflin, of Randolph,  
Henderson,  
Hodges,

Howze,  
Inge,  
Jones, of Bibb,  
Kirk,  
Kirkland,  
Knight,  
Ledbetter,  
Leigh,  
Lomax,  
Long (Walker),  
Lowe (Jefferson),  
Lowe (Lawrence),  
Macdonald,  
Martin,  
Moody,  
NeSmith,

Norman,  
O'Neal (Lauderdale)  
O'Neill (Jefferson),  
Opp,  
Parker (Cullman),  
Rogers (Lowndes),  
Selheimer,  
Sentell,  
Sloan,  
Waddell,  
Walker,  
Watts,  
White,  
Willet,

Total—54.

#### NOES.

Messrs. President,  
Ashcraft,  
Banks,  
Bartlett,  
Bulger,  
Burns,  
Browne,  
Byars,  
Chapman,  
Cofer,  
Craig,  
Davis, of DeKalb,  
Davis, of Etowah,  
Dent,  
Duke,  
Eley,  
Espy,  
Fletcher,  
Gilmore,  
Greer, of Perry,  
Harrison,  
Heflin, of Chambers,  
Hinson,  
Hood,

Jackson,  
Jenkins,  
Jones, of Hale,  
Jones, of Wilcox,  
Kyle,  
Locklin,  
McMillan (Wilcox),  
Malone,  
Maxwell,  
Merrill,  
Miller (Marengo),  
Miller (Wilcox),  
Mulkey,  
Murphree,  
Norwood,  
Oates,  
O'Rear,  
Palmer,  
Parker (Elmore),  
Pettus,  
Phillips,  
Pillans,  
Porter,  
Proctor,

Reynolds (Chilton),  
Reynolds (Henry),  
Robinson,  
Rogers (Sumter),  
Sanders,  
Sanford,  
Searcy,  
Smith (Mobile),  
Smith, Morgan M.,  
Sorrell,  
Spears,  
Spragins,  
Stewart,  
Studdard,  
Tayloe,  
Weakley,  
Weatherly,  
Whiteside,  
Williams (Barbour),  
Williams (Marengo),  
Wilson (Clarke),  
Winn,

Total—27.

#### ABSENT OR NOT VOTING.

Almon,  
Altman,  
Beavers,

Boone,  
Case,  
Coleman, of Walker,

Fitts,  
Freeman,  
Graham, of Talladega,

Handley,	Morrisette,	Smith, Mac. A.,
Howell,	Pearce,	Sollie,
Jones, of Montgomery,	Pitts,	Thompson,
King,	Reese,	Vaughan,
Long, (Butler),	Renfro,	Williams (Elmore),
McMillan (Baldwin),	Samford,	Wilson (Washington),

During the roll call:—

MR. OATES—When Mr. Morrisette left I was paired with him, but I don't know how he would vote, and I, therefore, vote no myself.

MR. REESE—I am paired with Mr. Fitts of Tuscaloosa. I suppose he would vote no. I would vote aye.

So the motion to table was lost.

MR. FOSTER—I offer an amendment.

MR. HARRISON—I rise to a point of order. The amendment is not in order.

THE PRESIDENT—The point is well taken. The question is on the amendment of the gentleman from Lee.

A vote being taken on a division the amendment was adopted, 72 ayes and 51 noes.

MR. FOSTER—I desire to offer an amendment.

The amendment was read as follows: Amend by inserting between the words "amount" and "greater" in the first line "not including debts which mature within twelve months after the creation of the same."

MR. FOSTER—Just a few words to explain that. The idea has occurred to me from conditions that frequently exist in my county though we are not up to the tax limit I can readily conceive that counties which are up to the limit can be put in a bad condition. We have a great many streams that are frequently swollen and bridges that are washed away and our court of county commissioners have frequently to make temporary loans and levy special taxes to provide for these matters. This is the purpose of my amendment.

MR. KIRK—Can that amendment be voted on until the first amendment is disposed of?

MR. FOSTER—I offer it as an amendment of the gentleman from Colbert.

MR. LOMAX—As a matter of parliamentary procedure, with the original proposition pending the amendment of the gentleman from Colbert, and the amendment of the gentleman from

Tuscaloosa to his amendment, can I offer this as a substitute for the section, and the amendments?

THE PRESIDENT—It is called to the attention of the Chair that the substitute of the gentleman from Lee was offered as a substitute to Section 9 and the pending amendment. An amendment should be directed now to the substitute.

MR. LOMAX—My substitute would be in order at this time then?

THE PRESIDENT—It seems to the Chair with the amendment of the gentleman from Tuscaloosa pending, we would have two amendments pending. A further amendment, (and a substitute would be an amendment), would not be in order at this time, until the amendment offered by the gentleman from Tuscaloosa is disposed of.

MR. LOMAX—I am inclined to the opinion that the friends of a measure have a right to perfect it by amendment before a substitute is in order, and that I believe is the ruling of the Chair.

THE PRESIDENT—If that point had been made before the substitute was acted upon, but the substitute of the gentleman from Lee has been acted upon and adopted.

MR. LOMAX—And the Chair holds then that my substitute would not be in order until after action on the amendment now pending.

THE PRESIDENT—Yes, sir.

Upon a vote being taken, the amendment offered by the gentleman from Tuscaloosa (Mr. Foster) was lost.

MR. LOMAX—I offer a substitute for the original section as amended and for the pending amendment, if there be one pending.

The substitute was read as follows: "No county in this State having an assessed valuation exceeding twenty million dollars of taxable property, shall become indebted in an amount exceeding five per cent of its assessed valuation, and counties having an assessed valuation of less than twenty million shall not incur a debt exceeding four per cent of its assessed valuation, provided this limitation shall not apply to debts created for the construction of court houses and jails. Nothing herein contained shall prevent the issue of renewal bonds or bonds to fund the floating indebtedness of such county, now existing."

MR. HARRISON—I rise to a point of order on that amendment, because it is undertaking indirectly to undo what this Convention has acted upon and adopted, and is a substitute for the whole section, and it is contrary to its provisions, particularly

the substitution of four or five per cent for three and one-half, is an effort in an indirect way, without reconsidering it, to change the action of this Convention.

MR. O'NEAL (Lauderdale)—I call attention to the fact that the proposed substitute of the gentleman from Lee was in fact an amendment. He offered it is an amendment as I understood it, and offered to amend by striking out from the original section the word five, and inserting three and one-half.

THE PRESIDENT—The substitute of the gentleman from Lee was offered as a substitute to the pending amendment and was adopted. The Chair will hear from the gentleman from Montgomery upon the point of order.

MR. LOMAX—I understand the Chair to rule that a substitute is nothing but an amendment. Then the effect of the substitute offered by the gentleman from Lee was simply to amend the original section, by striking out and inserting. That was what it amounted to. It was nothing more than an amendment. Now, when an original proposition is pending, and an amendment is pending to that proposition, and an amendment to that amendment, a substitute cannot be offered, and under the rules of the Fiftieth Congress, (I have not a later rule), the rule was that a substitute was not in order until after the friends of the measure had perfected an amendment. In other words when a proposition was pending, and an amendment was offered, and an amendment to that amendment, a substitute was not in order until the friends of the measure had had the chance to perfect the amendment.

Now if it be true that a substitute is nothing but an amendment, then after the adoption of the substitute of the gentleman from Lee, the original proposition stood before this House simply as amended, and nothing more. Standing in that position, then, it was subject to amendment again, as the Chair has held here, by entertaining the amendment of the gentleman from Tuscaloosa and other gentlemen upon the floor of the Convention, and if it is subject to amendment, then it is subject to substitute, because a substitute is an amendment, and I submit that my proposition is in order under that view of the law.

THE PRESIDENT—The point made by the gentleman from Lee is that the rate of 5 per cent. was stricken out by a vote of the Convention and 3 1-2 inserted in lieu of 5, and that the effect of your amendment, without reconsidering the vote whereby the Convention struck out the 5 per cent. and inserted the 3 1-2, is to reinsert the 5 per cent.

MR. LOMAX — But my amendment does not go to that length. There is no better established rule in parliamentary law than this: that you can move to strike out and insert certain



words, and after that motion has been adopted, then you can move to strike out certain words preceding those which were inserted, or certain words which followed those inserted, and that motion would be in order, although the Convention had already adopted the motion to strike out and insert. So in that view of the case the amendment would be in order. Now another proposition is this: If my amendment—

THE PRESIDENT—The point is that 5 per cent. was in the section,—

MR. LOMAX—Yes, I am coming to that now.

THE PRESIDENT—And the gentleman from Lee moves to strike out 5 per cent and insert 3 1-2, and that amendment was adopted. Now you propose to strike out 3 1-2 and insert 5—

MR. LOMAX—Not entirely.

THE PRESIDENT—And is that not practically a reconsideration of the question?

MR. LOMAX—I was coming to that identical point when the Chair interrupted.

MR. DENT—The gentleman from Montgomery wants to insert 4.

MR. LOMAX—Five in one place and 4 in another. If my proposition had been to strike out the 3 1-2, after it had been adopted by this Convention in lieu of the 5, and insert 5, then the point of order would be well taken against my amendment, because it was simply to undo a thing without reconsideration; but my proposition goes further than that. It proposes as to certain counties in the State, 5 per cent. shall be fixed as the limit; as to certain other counties 4 per cent. shall be fixed and the 4 and 5 per cent. shall not apply to court houses or jails, or to the funding of the debt of a county.

Now coming to that point, and going further than the proposition, not attempting to reconsider it, but offering more, I submit the proposition is in order, but that it would not have been in order if it merely sought to go back. It is entirely a new proposition. "No county in the State having an assessed valuation exceeding \$20,000,000 of taxable property, shall become indebted in an amount exceeding 5 per cent. of its assessed valuation, and counties having an assessed valuation of less than \$20,000,000 shall not incur a debt exceeding 4 per cent. of its assessed valuation, provided this shall not apply to debts created for the construction of court houses and jails. Nothing herein contained shall prevent the issue of renewal bond or bonds to fund the floating indebtedness of such county now existing."

MR. SANFORD—I offer an amendment to that amendment.

THE PRESIDENT—The Chair will overrule the point of order. It seems to the Chair that there is sufficient change in the proposition of the gentleman from Montgomery to save it from the objection that it is a mere proposition to reconsider.

MR. HARRISON—The Chair has not heard from me—

THE PRESIDENT—The Chair will hear from the gentleman if he desires to discuss it.

MR. HARRISON—I will make a suggestion, Mr. President. The substitute offered by the gentleman from Montgomery, it occurs to me, is very largely the amendment that was offered by the gentleman from Colbert, with a little change in the phraseology, and mine was adopted, being a substitute for that, as well as for the original Section. The fact that he has merely varied it by putting in 4 in one place and 5 in another, instead of the 3 1-2, I submit cannot change the rule. If a legislative body can strike out 5 and insert 3 1-2, and be permitted again to have a vote of the Convention and strike out 3 1-2 and insert 4 and 5, what becomes of the action of the Convention in fixing any definite amount? It occurs to me that there would be no end to it, and if the Chair holds that it is in order, I only want to say that the Convention can probably settle it, and I move to lay the substitute on the table.

MR. SANFORD—I offer this—

THE PRESIDENT—The chair thinks the proposition to fix the 5 per cent. rate for the whole State is not the same as to fix 5 per cent. for a part of the State and 4 per cent. for another part.

MR. HARRISON — It originally fixed it at 3 1-2 for the whole State. The substitute fixed the entire State at 3 1-2.

THE PRESIDENT—The substitute fixes it at 3 1-2 for the entire State, and the amendment proposed by the gentleman from Montgomery is to fix it at 5 per cent. for a part of the State, and at 4 per cent. for another part.

MR. HARRISON—His amendment would not allow 3 1-2 to apply anywhere.

THE PRESIDENT—That is the reason he wants to offer the amendment.

MR. HARRISON—It changes the action of the Convention entirely.

THE PRESIDENT—But speaking to the point of order, and that was the question, the point of order was whether it was merely a question of reconsideration. The Chair is of the opinion that the point of order is not well taken.

MR. HARRISON—Then I move to lay the substitute on the table.

MR. LOMAX—And on that I call for the ayes and noes.

The call for the ayes and noes was sustained.

THE PRESIDENT—The question is on the substitute offered by the gentleman from Montgomery to the substitute offered by the gentleman from Lee, and the gentleman from Lee moves to lay the substitute offered by the gentleman from Montgomery on the table. The ayes and noes are called for and have been ordered. Those in favor of the motion to table will say aye, and those opposed no, as your names are called.

During the call of the roll.

MR. REESE—I am paired with the gentleman from Tuscaloosa, Mr. Fitts; if he were here he would vote aye and I would vote no.

Upon the call of the roll, the vote resulted as follows:

#### AYES

Messrs. President,	Harrison,	Porter,
Ashcraft,	Heflin, of Chambers,	Proctor,
Banks,	Hinson,	Reynolds, of Chilton,
Bartlett,	Hood,	Reynolds (Henry),
Beavers,	Inge,	Robinson,
Brooks,	Jackson,	Rogers, of Sumter,
Browne,	Jones, of Hale,	Sanders,
Bulger,	Jones, of Wilcox,	Sanford,
Byars,	Kirkland,	Searcy,
Carnathon,	Kyle,	Sloan,
Chapman,	Leigh,	Smith, of Mobile,
Cobb,	Locklin,	Smith, Morgan M.,
Cofer,	McMillan, of Wilcox,	Sorrell,
Coleman, of Greene,	Malone,	Spears,
Craig,	Martin,	Spragins,
Cunningham,	Maxwell,	Stewart,
Davis, of DeKalb,	Merrill,	Studdard,
Davis, of Etowah,	Miller, of Marengo,	Tayloe,
Dent,	Miller, of Wilcox,	Waddell,
Duke,	Mulkey,	Walker,
Eley,	Murphree,	Weatherly,
Espy,	Oates,	Whiteside,
Fletcher,	O'Rear,	Williams, of Barbour,
Foshee,	Palmer,	Williams, of Marengo,
Foster,	Parker, of Elmore,	Wilson, of Clarke,
Gilmore,	Pettus,	Winn.
Greer, of Calhoun,	Pillans,	
Greer, of Perry,	Phillips,	
Total—82.		

## NOES

Barefield,	Grant,	MacDonald,
Beddow,	Grayson,	Moody,
Bethune,	Haley,	NeSmith,
Blackwell,	Heflin, of Randolph,	Norman,
Burnett,	Henderson,	Norwood,
Burns,	Hodges,	O'Neal, of Lauderdale,
Cardon,	Howze,	O'Neil (Jefferson),
Carmichael, of Colbert,	Jenkins,	Opp,
Carmichael, of Coffee,	Jones, of Bibb,	Parker, of Cullman,
Cornwall,	Kirk,	Rogers, of Lowndes,
deGraffenreid,	Knight,	Selheimer,
Eyster,	Ledbetter,	Sentell,
Ferguson,	Lomax,	Watts,
Glover,	Lowe, of Jefferson,	Weakley,
Graham, of Montgomery,	Lowe, of Lawrence,	White,

Total—45.

## ABSENT OR NOT VOTING

Almon,	Jones, of Montgomery,	Samford,
Altman,	King,	Smith, Mac A.,
Boone,	Long, of Butler,	Sollie,
Case,	Long, of Walker,	Thompson,
Coleman, of Walker,	McMillan (Baldwin),	Vaughan,
Fitts,	Morrisette,	Willet,
Freeman,	Pearce,	Williams, of Elmore,
Graham, of Talladega,	Pitts,	Wilson, of Washington.
Handley,	Reese,	
Howell,	Renfro,	

By a vote of 82 ayes and 45 noes, the motion to table prevailed.

MR. CARMICHAEL (Colbert)—I offer an amendment.

The amendment was read as follows:

"Provided, that any county which is already indebted in an amount which equals, or exceeds the debt limit herein provided, may for the erection of the necessary public buildings, borrow in addition to said 3 1-2 per cent, a sum not greater than 1 1-2 per cent. of the assessed valuation of the taxable property of said county."

MR. HARRISON—I move the previous question on the Section, the amendment adopted, and the pending amendment.

The main question was ordered.

THE PRESIDENT—The question is on the amendment offered by the gentleman from Colbert.

A vote was taken, viva voce, and the Chair stated that he was in doubt.

MR. CARMICHAEL (Colbert) — Have I not the right to make some remarks on this amendment, being the mover of the amendment?

THE PRESIDENT—The Chair is of the opinion that the gentleman is entitled to discuss the matter. The Chair failed to discover that the gentleman desired to be heard.

MR. CARMICHAEL (Colbert)—I would like for the amendment to be read, Mr. President.

MR. WILLIAMS (Marengo)—A point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. WILLIAMS (Marengo) — Did not I understand the Chair to rule the other day that the Chairman of the Committee had the right to close, under such conditions, and not the gentleman offering the amendment?

THE PRESIDENT—That is true, where the previous question has been ordered, unless the gentleman yields to the gentleman from Colbert.

MR. BROWNE—I will yield half of my time to the gentleman from Colbert, and the other half to the gentleman from Lee, if the Chairman is entitled to it.

The amendment was again read.

THE PRESIDENT—The Chair will state that the gentleman from Colbert will have five minutes, and the gentleman from Lee five minutes. The gentleman will proceed—

MR. KIRKLAND—I rise to a point of order. The vote has already been taken on this question and a division called for. It is too late to discuss it.

THE PRESIDENT—The Chair overlooked the fact that the gentleman from Colbert desired to debate the question.

MR. KIRKLAND—I insist upon the point of order.

MR. BROWNE—I make the point of order that the Chair has not announced the vote.

MR. BULGER—I desire to make the point of order that the gentleman from Colbert had no right to debate the subject after the previous question was ordered, and it was only conceded to him by the Chairman of the Committee, after that was done.

MR. BROWNE—I make the point of order that the Chair was only in the act of taking the vote. The vote had not been taken and announced.

THE PRESIDENT—The vote had not been announced, and the Chair submitted the question to the Convention prematurely. The Chair should have paused to discover whether the Chairman of the Committee desired to discuss the question. The Chair will therefore overrule the point of order and recognize the gentleman from Colbert.

MR. CARMICHAEL (Colbert)—I venture the assertion that the County of Colbert has taken up as little of the time of this Convention as any county in the State, and we would not be here now except for the purpose of appealing to this Convention to allow us to take care of ourselves. Now, unfortunately, it is true; we have become indebted in a much greater amount than perhaps we ought, in the sum of \$200,000.

MR. OATES—Will my friend allow a suggestion?

MR. CARMICHAEL (Colbert)—Yes, sir.

MR. OATES—Why did you not frame your amendment for Colbert County and submit it?

MR. CARMICHAEL (Colbert)—I would suggest that the amendment does not reach any county in the State except Colbert. It does not now, and cannot possibly reach any county in the State except Colbert County—

MR. SANFORD—Put Colbert in there, then.

MR. CARMICHAEL (Colbert)—We would suggest to the gentlemen from Montgomery that we would like to avoid the naming of our county in the Constitution in that connection; and Mr. President, I would ask the gentlemen before they vote against this amendment, to read it carefully, and if they do so, it will be seen that it does not apply to any county in the State except Colbert. It specifically says that provided that any county which has already contracted an indebtedness exceeding the limit, which is 3 1-2 per cent now, that they may, for the purpose of building court houses and jails, and for the ordinary expenses of the county, contract an additional indebtedness of 1 1-2 per cent. Now that only makes five. If the gentlemen will read that amendment, they will see that it cannot possibly apply to any other county in the State except the county of Colbert, and we appeal to this Convention to allow us to contract an indebtedness for these purposes, should it become necessary to do so.

THE PRESIDENT—The time of the gentleman has expired.

MR. HARRISON—Mr. President, it is with some diffidence that I oppose the request contained in that amendment but it is in

the nature of a general law. If the delegate from Colbert had confined it to his county, while perhaps it would have looked badly in the Constitution, I am afraid, for Colbert County, yet we merely have his assertion that it only applies to Colbert County. If it does, why does he object to naming it?

I have further objection to this amendment, and that is because it is at least waiving in part the very principles that we are contending here for I do not think that Colbert, or any other county, if it is so badly in debt that it is unable to pay the interest upon its public debt, until it adjust that indebtedness, ought to be permitted to incur any more, and I feel the convention in placing the limit in the Constitution, should call a halt on the county.

MR. deGRAFFENREID—Suppose the court house were to burn down?

MR. HARRISON—Let them go, as they would have to do, in my opinion — if they could not issue bonds or borrow any money—and levy the tax to rebuild it, and, by levying that tax, perhaps their own banks and people, if the tax were levied and a warrant drawn on it, would aid them; but I think if they are in that unfortunate condition, they will have to pay cash until they adjust their indebtedness.

MR. CARMICHAEL (Colbert)—I would like to ask if it would be possible for Colbert County to contract any indebtedness at all under your substitute?

MR. HARRISON—Nor do I believe you can do without it.

MR. CARMICHAEL (Colbert)—Would not you be willing to allow us the opportunity to try, should it become necessary?

MR. HARRISON—If you will confine it to Colbert County, I would not object to it, but you are putting a general provision in there, which I do not think will do you any good. I sympathize with the delegate from Colbert, but I do not see why, if he is the only county in that condition, he does not name it. I think you will have remedy enough in Section 5, when you come to consider it. You will see you have authority to levy a tax for these purposes you desire to include in your amendment. You will have to levy a tax upon the property, without incurring a debt for these improvements.

MR. CARMICHAEL (Colbert)—Does not Section 5 provide for the levy of the tax, but does not this section provide for a prohibition upon any increase of the debt of the county?

MR. HARRISON—Yes; but if you pay cash for it, it would not be a debt. There is no inhibition on your raising money and going and building it.

MR. CARMICHAEL (Colbert)—I suggest to the gentleman that the taxes would not furnish the relief we might need.

MR. HARRISON—I think it would, Mr. President; and I have only five minutes, which I believe is about out—

MR. O'NEAL (Lauderdale)—Is not this limit of 3 1-2 lower than that fixed in any Constitution of any State in the Union?

MR. HARRISON—I have not examined as to that. If there is any other State of the Union that has any lower limit, it does not affect Alabama. I know it is enough for any county in Alabama, and if you exceed that, you will default on your public debt.

THE PRESIDENT—The question is on the adoption of the amendment proposed by the gentleman from Colbert. A division is called for. As many as favor the adoption of the amendment will rise and remain standing until counted.

And, by a vote of 66 ayes and 44 noes, the amendment was adopted.

THE PRESIDENT—The question recurs upon the substitute. As many as favor the adoption of the substitute proposed by the gentleman from Lee, as amended, will say aye.

And the substitute was adopted.

THE PRESIDENT—The question recurs upon the adoption of the section as amended.

And the section as amended was thereupon adopted.

MR. BROWNE—I desire to offer an amendment to the article reported by the Committee.

MR. LONG (Walker)—I ask unanimous consent to offer a resolution to have it referred. It is short.

MR. BROWN—Not now. I offer an amendment to the Article as reported, which amendment is a separate section, and I ask for the reading of the amendment.

THE PRESIDENT—What section?

MR. BROWNE—It has no number, but it will be numbered when the whole article is complete.

MR. LONG (Walker) — It is in order to read the original section as reported.

MR. BROWNE—I can explain it, if it needs explanation.

THE PRESIDENT—What is the proposition of the gentleman from Talladega?



MR. BROWNE — The proposition is an amendment to the article reported by the Committee, by incorporating a section in the article as reported. It has no number.

MR. OATES—Is that in order to offer a section, until the article is completed? Then it seems to me would be appropriate time and place to offer the additional section. After it is completed, it would be in order to offer an amendment to the article.

MR. BROWNE—That is all brought about by a ruling of the Chair when the Committee on Executive Department was reporting. I then offered an amendment to the whole article, to take the place of a section, that was laid upon the table, and the chair held that that could not be done as that section was laid upon the table. But I now offer a new section and there is no rule which requires one to wait until every section reported by the Committee has been considered before you can offer an amendment by adding another section.

MR. LONG (Walker)—I make the point of order that no amendment can be offered before the House until the next section is reached.

MR. BROWNE—The whole article is before the House.

MR. LONG—It is being considered section by section. I make the further point of order that this section has never been read, so he cannot offer an amendment to it.

MR. BROWNE—In reply to the point of order if the gentleman is correct, then I never could offer it because after the last section has been considered and acted upon, the gentleman could say with equal force that there was no section before the House.

THE PRESIDENT—The gentleman from Talladega does not state the ruling of the Chair, as the chair recollects it. The Chair did not rule so far as the recollection of the Chair now goes, that upon the completion of an article that it could not be amended by adding additional sections. On the contrary, the recollection of the Chair is that the ruling was that additional sections might be added, and they were added to the report of the Committee on Executive Department. Now the question is made that the Convention has under consideration the report of the Committee on Taxation, and that it is considering it section by section, and that nine sections have been disposed of, and the next order would be the consideration of section 10, and the gentleman from Talladega moves to amend the article by adding an additional section.

MR. BROWNE—I did not move to amend by adding. By incorporating a section in the article as reported, but not by adding it; by incorporating a different section in it.

**THE PRESIDENT**—What number does the gentleman desire—

**MR. BROWNE**—I have not given it any number. I will just mark it—

**THE PRESIDENT**—Nine and a half?

**MR. BROWNE**—Mark it nine and a half, and let the Committee on "Harmonies" fix the number, or mark it ten.

**MR. PETTUS**—I rise to a point of order. Under the rule adopted, the regular procedure is the consideration of the report of the Committee on Taxation section by section; until that order is completed, an amendment to the whole article, by incorporating a new section, is not in order, without a suspension of the rules.

**MR. BROWNE**—I make the point of order, and there are a great many gentlemen here who have sat in different legislative bodies and they all know it is correct, that in considering any ordinance or act by section, it is competent to offer to amend the whole act by incorporating in the act an additional section, at any point when you have concluded the consideration of a section.

**THE PRESIDENT**—The Chair is in doubt upon the ruling and will reserve the ruling and announce it at the afternoon session. The Chair is unable at present to decide what ruling should be made. Does the gentleman from Montgomery desire to discuss the question?

**MR. OATES**—I merely wish to remark in reply that the rule is that a report of a Committee, when taken up, must be considered section by section, and that not having been done, it is not completed, and it is not in order to go back into the body of the article and offer a new section, probably for one that has been knocked out. I don't know about that, but it is going back, and until the ordinance is completed, the rule is not complied with. Then it would be competent to offer an amendment by way of a new section, that may come in any part of the article, but not until the report of the Committee is completed.

**THE PRESIDENT**—That is the inclination of the Chair but it is now near adjourning time, and the chair will reserve the ruling upon the point.

**MR. BROWNE**—I will withdraw it rather than take up so much time about it. I am perfectly confident I am right about it though.

**THE PRESIDENT**—The Clerk will read the next section.

Section 10 was read as follows:

Sec. 10. No city, town or other municipal corporation shall become indebted in an amount exceeding 5 per centum of the taxable values of the property thereof; provided that for the erection or purchase of water works, gas or electric plants, or sanitary sewerage an additional indebtedness not to exceed 3 per centum may be created; provided, further, that this section shall not apply to indebtedness in excess of such 5 per centum already created or authorized by law to be created.

MR. BROWNE—I desire to offer an amendment.

MR. LONG (Walker)—Will not the gentleman suspend until I can offer a resolution. We cannot get through with the section any way, and I desire the resolution to be referred to the proper committee.

MR. BROWNE—This is a little amendment simply to correct a defect—

MR. LONG (Walker)—Will not the gentleman yield—

MR. BROWNE—I will not.

The amendment was read as follows:

Amend Section 10 by inserting the words "the excess of" after the words "not applied to" on line five, and strike in "in excess of" in line five, and insert in lieu thereof the word "over" and insert after the words "authorized by" in line six, the word "now existing."

MR. BROWNE—That amendment is simply to make it conform to the changed phraseology in the section we have just adopted, so as to relieve it of ambiguity.

Mr. Long (Walker) sought recognition when the clock struck one.

MR. KIRKLAND—I rise to a point of order.

The Convention thereupon adjourned until 3:30 o'clock p. m.

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#### AFTERNOON SESSION.

The Convention was called to order by the President and a call of the roll showed the presence of 115 delegates.

MR. REYNOLDS (Chilton)—I am authorized by the Mayor of my town and other authorities to inform the Convention that there will be a grand free barbecue at our city tomorrow and to extend to the members of the Convention, officers and pages an invitation to be present.

**THE PRESIDENT**—On behalf of the Convention the Chair returns thanks to the people of Chilton for the kind invitation.

**MR. BROWNE**—I ask unanimous consent to withdraw the amendment proposed by me immediately before adjournment in order that I may offer another amendment to meet the same object, but better expressed.

**MR. BEDDOW**—I ask unanimous consent to introduce a short resolution.

**THE PRESIDENT**—The gentleman asks unanimous consent to introduce a short resolution. Is there objection? The Chair hears none.

**MR. PILLANS**—I objected.

**MR. O'NEAL**—The objection was not made until after the Chair announced there was no objection.

**MR. PILLANS**—I objected twice before the Chair announced and I heard other delegates object.

**MR. deGRAFFENREID**—In order to settle the matter I move that the rules be suspended and that the delegate from Birmingham be allowed to introduce his resolution at this time.

A vote being taken the motion to suspend was carried and the resolution was offered and was read as follows:

Resolution No. 219, by Mr. Beddow of Jefferson:

Whereas, various resolutions have been adopted throughout the State requesting that this Convention patronize union labor by having its printing done by members of the Typographical Union, and that the union label be printed thereon, and

Whereas the union labor should be encouraged by the people of Alabama in Convention assembled.

Therefore be it,

Resolved, That the Committee on Schedule, Printing and Incidental Expenses be and they are hereby instructed to patronize the printing establishments having in their employment union labor and have the union label printed thereon.

Referred to Committee on Schedule, Printing and Incidental Expenses.

The amendment offered by the delegate from Talladega, Mr. Browne, was read as follows: Amend Section 10 by striking out all the said Section after the word created in the fourth line and inserting in lieu thereof the following: "Provided further, that the limitation of five per cent mentioned in this section shall not

apply to any existing indebtedness exceeding such five per centum which has already been created or which has been authorized by now existing law to be created.

MR. BROWNE—I desire to state in regard to that amendment that it is simply done to relieve a possible ambiguity in the proviso. It does not change the sense of the section at all.

The unanimous consent was not given.

MR. WEAKLEY — I offer a substitute for Section 10 and pending amendments.

The substitute was read as follows:

Section 10. That no city, town or village shall hereafter become indebted for any purpose or in any manner to an amount which including existing indebtedness shall exceed seven per centum of the assessed valuation of the real and personal property within said city, town or village subject to taxation as shown by the last preceding assessment for State and county purposes, provided, however, that in determining the limitation of the power of such city, town or village to incur indebtedness there shall not be included the following class of indebtedness, to wit:

(a) Notes, certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, unless the same be not paid within two years from the date of such issue and all such notes, certificates of indebtedness and revenue bonds shall be provided for, and made payable from the taxes levied for the year in which they are issued, and shall never exceed the amount of such taxes.

(b) Bonds issued for the purpose of purchasing or otherwise providing for a supply of water or for the construction or installation of sanitary sewers or for the extension of either of the same.

(c) Obligations incurred and bonds issued to procure means to pay for street or sidewalk improvements or storm water sewers, the cost of which is to be assessed against the property abutting or drained by such sewers.

(d) Debts created for the preservation of the public health.

(e) Debts existing on the 6th day of December, 1875, or any obligation issued to renew or refund the same.

MR. WEAKLEY—The substitute which has just been read—

MR. LONG (Walker)—Will the gentleman please allow me to offer a short resolution for reference to a committee.

THE PRESIDENT—The gentleman from Walker asks unanimous consent to introduce a resolution. Is there objection?

There was no objection.

MR. LONG (Walker)—I move a suspension of the rules that I may offer this resolution.

A vote being taken the rules were suspended and the resolution was offered and read as follows:

Resolution No. 220, by Mr. Long (Walker):

Whereas, This Convention passed a resolution today allowing no absent member per diem, unless excused on account of sickness, and whereas, the members of this Convention have great respect for the truth and veracity, and good wishes for the public health, and whereas, the adoption of said resolution will have a tendency to make all absent members feel badly and the effect of making all future leaves of absence be requested on account of sickness of members of their families.

Therefore, for the public good, in the interest of truth, and as a preventive of an epidemic of sickness among members of this Convention and their families, one or both, be it resolved, by the people of Alabama in Convention assembled, that the said resolution No. 184, which offers a premium of \$4 per day for sickness, be and the same is hereby repealed.

Referred to Committee on Rules.

MR. WEAKLEY—The substitute for Section 10, which has been read to the Convention, is Section 8 of the report of the Committee on Municipal Corporations.

The question of fixing a proper debt limit for the cities of Alabama is a very difficult proposition. The people who have investigated the financial condition of the various municipalities are convinced that there should be placed some restrictions upon the power of municipalities to incur debts. At the same time we must remember that under the Constitution under which we have been living for the last twenty-five years there has been a limited power on the part of cities to raise money by taxation and an unlimited power to increase debts. A great many of the cities of Alabama, in fact nearly all have incurred tremendous amounts of debt, far in excess of that which ought to be incurred by any city, the affairs of which are prudently conducted. For the purpose of ascertaining how a debt limit placed in this Constitution would affect the various cities of Alabama, I have instituted an inquiry and I will present to the Convention the substance of that so far as the same relates to a few of the leading cities of Alabama.

The city of Birmingham has an assessment valuation of \$15,000,000. Its debt is somewhere in the neighborhood of \$2,000,000, in other words, about 15 per cent.

The city of Bridgeport, North Alabama, has a bonded debt of 31 per cent. of its assessed valuation.

Decatur has an assessed valuation of \$675,000, and a 10 per cent. debt.

Dothan has an assessed valuation of \$450,000 and an 8 per cent. debt.

The city of Eufaula has a valuation of \$2,700,000 and a 7½ per cent. debt.

Gadsden has a debt of 11 1-2 per cent.

Huntsville has an assessed valuation of \$2,840,000 has a debt of 6 per cent.

Mobile with an assessed valuation of \$15,880,000 has a total debt of \$3,100,000, or about 20 per cent.

Montgomery with an assessed valuation of \$12,500,000 has a debt of 16 per cent.

Selma with a valuation of \$4,692,000, has \$324,000 debt, or 7 2-10 per cent.

Tuscaloosa with an assessed valuation of \$1,576,000, has a debt of 8 per cent.

Bessemer has a 4 per cent debt, Florence a 7 per cent. debt and Ozark 4 1-2 per cent.

So the gentlemen of the Convention will see it is a difficult proposition to find the exact limit which should be placed on the powers of a city to create a debt that will not create some hardship or prevent cities from carrying on some necessary and much needed improvements.

The Committee on Municipal Corporations after a full discussion and consideration of this matter reached the conclusion that in the first place there should be no limit fixed upon the power of the cities to create a debt for the purpose of purchasing water works or acquiring a system of water works or system of sewerage. These two items of public utility are so necessary to the public health and the public good that it ought under all circumstances to remain within the power of the people to build water-works and a sewerage system. Apart from the fact that considerations of health and public safety require the construction of water-works and sewerage, it is also an admitted fact that no enterprise which produces a revenue to the city should be regarded in fixing the debt limit of the city. I wish to take up the time of the Convention long enough to read a short item from a paper prepared by the Honorable Bird S. Coler, Comptroller of New York City, who is a high authority upon all questions pertaining to municipal indebtedness. He says:

"I wish to state clearly my appreciation of, and adherence to, the wisdom of constitutional restrictions on the indebtedness

of cities. These restrictions are to be found in the Constitutions of nearly all our States, and have been upheld both in letter and in spirit by the decisions of our courts. They have undoubtedly served to prevent the financial ruin of many small cities, which in the hands of unscrupulous political adventurers would otherwise have undergone disastrous experiences. Yet this constitutional limitation has itself its limitations. It should not be made a fetish to be worshiped blindly at the expense of really necessary progress.

If the competition which exists today between nations and cities, as well as between individuals, to stand still means to retrograde, and if it should happen that a choice must be made between stopping the modernization of New York and amending the Constitution, I am in favor of the latter course, provided no real danger to the city's credit and solvency be thereby threatened.

I believe the clause in the Constitution limiting municipal indebtedness—wholly admirable at the time it was written—is not altogether adapted to modern requirements, in that it does not discriminate sufficiently between two classes of city debts of a wholly different character.

A city issues bonds only for permanent improvements, the benefits of which inure to posterity. But there are two classes of these improvements, easily distinguishable from one another, and between which a sharp distinction should be drawn.

In one of these classes are improvements which, while adding to the attractiveness, beauty, and healthfulness of a city, to its economical administration, or to the better conduct of its governmental functions, bring in no direct financial returns. This is by the erection of public buildings, including schools, the acquisition of parks, and the repaving of streets. No matter how great the material benefits may be that are derived from such improvements, the expense incurred is unquestionably a financial burden upon the taxpayers. In regard to such expenditures there can be no doubt as to the wisdom of establishing an arbitrary constitutional limit, since otherwise the burdens that might be thrown upon succeeding generations by excessive issues of bonds would become intolerable.

There is another class of improvements, however, far less common, which either result in casting no burdens whatever upon the taxpayers or else bring in an actual profit to the municipality. In such cases it may be permissible to ask wherein there lies any rational excuse for limiting the governmental activities of a city by constitutional restrictions. A dim recognition of this truth seems already to have found expression in the Constitution of New York, which partially excepts from the operation of the debt limitation bonds issued to provide for the supply of water, and



requires only that a special sinking fund be established for their ultimate redemption. Why this exception? Because pure water is a prime necessity for the health of a community? Scarcely, for there are many other public necessities paid for by the issue of bonds which are hardly less imperatively needed by the people, and as to such the Constitution is silent. The reason must be found in the fact that for the past century, by a universal custom which has the force of unquestioned law, it has been the practice of cities owning water-works to charge consumers for the water supplied, and that the rentals received from the operation of this natural monopoly have almost invariably shown a profit over the expense of maintenance and operation. In other words, bonds issued to provide for the supply of water are not a real burden upon the taxpayers, since the water rents received pay the interest on these bonds, amortize the principal, and still yield a profit to the city."

Summing up the result of this article, the author says :

"Our constitutions should be amended so as to except from the limitation on the indebtedness of cities bonds issued to provide for improvements—which, while governmental in their character are, nevertheless, essentially business enterprises—and from the operation of which profits can be derived sufficient to provide a speedy payment of the indebtedness temporarily incurred."

I am aware, Mr. President, that the tendency of this argument to a certain extent is to municipal ownership of all classes of public service industries. I wish to state here and now, in my opinion a city should own its water-works, its sewerage system, and its lighting plant. Beyond that, I am not yet prepared to go. It seems to me that the proposition just stated was sufficient reason why the Committee on Municipal Corporations should seek to exclude from any debt limit the debts created by a city for the purpose of supplying its inhabitants with water. Consequently we have so reported.

MR. O'NEAL—Why do you except electric light and gas plants from that provision?

MR. WEAKLEY—The theory of the committee in not including light plants is because the maintenance of a light plant is a drain upon the general revenue of a city, unless the city goes farther and furnishes not only lights for the streets, but commercial lights as well. I am aware of the fact that in many of the cities of the country this is done and the receipts from commercial lighting go to a considerable extent in paying for the expense of lighting the streets. I do not, however, regard that as an entirely safe proposition.

THE PRESIDENT—The time of the gentleman has expired.

MR. deGRAFFENREID—I move that the rules be suspended and that the gentleman be permitted to continue his remarks.

THE PRESIDENT—What time does the gentleman indicate?

MR. deGRAFFENREID—Until the gentleman gets through.

A vote being taken the motion to suspend the rules was carried.

THE PRESIDENT—The motion is that the gentleman's time be extended indefinitely.

A vote being taken a division was called for.

MR. HEFLIN—I would like to amend by making it fifteen minutes. The gentleman says he can get through in that time.

MR. deGRAFFENREID—We were taking a vote and a division was called for and an amendment is not in order.

The taking of the vote was completed and the time of the delegate from Lauderdale was extended indefinitely.

MR. WEAKLEY—The question was just propounded by the delegate from Lauderdale asking why the Committee on Corporations did not exclude from the debt limit bonds for the purpose of construction or acquiring electric light plants. I believe, gentlemen, as stated before, that every city ought to own its own lighting plant. It has been demonstrated by actual experiment not only in small cities such as Athens, Ala., but also in Chicago, which has the largest municipal lighting plant in the world that a city can furnish light for its streets from 40 to 50 per cent. cheaper than any corporation will furnish it for them. But notwithstanding that fact, we believe the expense of lighting the streets of a city is a charge upon the general revenues of a city and that this expense, therefore, ought to be included in the debt limit.

The Committee on Municipal Corporations have further recommended that debts created for the purpose of constructing sewers be not included in the debt limit and the reasons for that are that the public health sometimes demands the building of sewers and that they should be constructed in any event. Another reason for that recommendation lies in the fact that in a number—I started to say the majority of cases—sewers are constructed and paid for by abutting property owners or property situated in the district drained by the sewers. In other words, we have adopted the rule that where any debt has been created which is not a charge upon the general revenues of the city, that debt should not be included in the limit. Section C of the substitute which I offer excludes from the debt limit bonds issued or obligations incurred to procure means to pay for streets or sidewalk improvements or storm water sewers, the cost of which is to be assessed against the property or the district drained by such sewers.

The same principle that leads us to exclude debts created for sewers also leads us to recommend to exclude debts created for public improvements which are created in the majority of cases at the request of the property owners who are benefited by those improvements and constitute no charge against the city but are charges against the property abutting the improvements, the property benefited by the improvements.

Section D, in the report of the Committee on Municipal Corporations, also excludes debts created for the preservation of the public health. This provision was inserted in view of the fact that, frame the debt limit in the way you will, there will still be a number of cities above the limit and in the event of the outbreak of disease or epidemic, they would be absolutely powerless to protect the public health. Section E of the report of the Committee excludes debts existing on the 6th day of September, 1875. In framing this Section no good reason could be found for inserting the provision therein except that otherwise the city of Mobile and the city of Montgomery would be debarred from raising any more money for public improvements.

MR. MACDONALD—Will the gentleman permit me a question?

MR. WEAKLEY—Yes.

MR. MACDONALD—I would like to inquire whether it was the intention in framing subdivision C to permit the entire cost of improvements to be assessed against contiguous property owners?

MR. WEAKLEY—That does not contemplate any such thing.

MR. MACDONALD—Does it not say so?

MR. WEAKLEY—No, sir. It says that no debt for obligations incurred or bonds issued to procure means to pay for street or sidewalk improvements or storm sewers, the cost of which is to be assessed against the property abutting or drained by such sewers, shall be included in the debt limit.

MR. MACDONALD—Does not that necessarily imply the authority of the municipality to assess the entire cost of an improvement against an abutting property holder.

MR. WEAKLEY—I think not.

Nearly all of the members are aware of the fact that the city of Mobile has a very large debt and it was feared by the delegates from that county that without this provision the city of Mobile would be absolutely helpless, and the city of Montgomery might also be seriously affected.

I understand that this exception as to debts existing on the 6th day of December, 1875, will probably affect but three cities of the State, Selma, Montgomery and Mobile. Now, gentlemen, I desire to say if the report of the Committee on Taxation is adopted and the power of a city to incur a debt be limited to 5 per cent., and only to be increased to 8 per cent. for the purpose of constructing water works and sewerage it will absolutely tie the hands of every municipality in the State of Alabama. In addition to that, if a city has a debt of 5 per cent. and is only allowed a further margin of 3 per cent. for the construction of water works and sewers, no city can build a system of water works or sewers for such an amount of money. By way of illustration, take Eufaula, which has an assessed valuation of over \$2,000,000. Three per cent. for the purpose of a system of water works and sewers would make \$60,000, and I do not see how it would be possible for that city to build these utilities for that sum.

The Convention this morning adopted a provision fixing the debt limit of counties at 3 1-2 per cent., which under certain conditions might be increased to 5 per cent. It occurs to me with a debt limit of 3 1-2 for counties, a debt limit of 7 per cent. for cities, making the entire debt limit of city and county a total of 10 per cent., might be a reasonably safe proposition.

Upon this point I desire to say that I have prepared a statement showing the debt limit of every State in the United States that has a limit and for the information of the Convention, and not to detain them, I will read a few of these figures.

Arizona, 4 per cent; Georgia, 7 per cent; Illinois, 5 per cent; Indiana, 2 per cent; Iowa, 5 per cent; Kentucky has a varying limit ranging from 2 per cent for counties up to 10 per cent for cities; Maine, 5 per cent; Minnesota, 5 per cent; Missouri, the same; Montana, 3 per cent, which may be increased for the purpose of erecting water-works and sewers; New York, 10 per cent, with an exception in favor of debts created for constructing water-works; North Dakota, 5 per cent; Pennsylvania, 7 per cent; South Carolina, 8 per cent; South Dakota, 5 per cent; Utah, 4 per cent; Virginia, 20 per cent; West Virginia, 5 per cent; Wyoming, 4 per cent; Washington, 10 per cent; Wisconsin, 5 per cent. I believe, gentlemen, this is all the information I desire to bring to the attention of the Convention, except to further state that the Committee on Municipal Corporations endeavored as far as possible to protect the various cities in the State of Alabama in fixing the debt limit, and at the same time having in view the fact that some limitation was absolutely necessary.

MR. BROOKS—I would ask the gentleman if the substitute he proposes is not Section 8 in the report of the Committee on Municipal Corporations?

MR. WEAKLEY—It is.

MR. SMITH (Mobile)—I would like to ask the gentleman a question. What class of municipal indebtedness can he think of that would be covered under the 7 per cent clause?

MR. WEAKLEY—Debts created for school buildings, city halls, fire stations, street improvements, parks.

MR. SMITH (Mobile)—Steet improvements you have in the substitute?

MR. WEAKLEY—Yes.

MR. MACDONALD—I am entirely opposed to the very dangerous suggestion made in the substitute. I asked the gentleman during the course of his argument whether the true understanding of subdivision C of his substitute was to permit municipalities to impose on abutting property owners the entire cost of sidewalks and street improvements and sanitary and other sewers. The gentleman did not directly answer that question, but it is obvious, and will be plain, to every lawyer in this Convention that that is a direct permission or a full permission to put such burdens on the taxpayers of the city.

MR. BROOKS—Would not that be obviated by inserting after the words "the cost of which is to be assessed," the words, "in whole or in part."

MR. MACDONALD—No, sir. If it is put "in whole or in part" that will still give the municipality the opportunity to put the full charge for the improvement on the abutting land owners.

In this city we have had a painful experience in regard to the action of municipalities in imposing such burdens upon the people. We have seen the property of the poor confiscated. We have seen them compelled to sell their homes for the purpose of paying such assessments as these. I can state case after case which has occurred in Montgomery within the last two or three years where people have been absolutely deprived of their property by this character of improvement, and this suggestion carries it further than was ever contemplated in Montgomery or any other city. That was a bad day for Alabama and for the inhabitants of the cities of Alabama when the Supreme Court departed from the rule in Dargan vs. the Mayor, when they held such assessments were invalid and when they rendered the opinion in the Kearns case. Why, gentlemen, the municipalities of this and other cities select what character of pavements they want and what character of sewers and they assess the cost of one-half of the cost up to this time, and this amendment suggests they can put it all upon the adjoining property owners, and they have gone on making such character of streets and sidewalks until it seems that they

are trying to rival the streets of New Jerusalem in the cost of the streets they are putting down here. I could cite you many hard instances from personal experience of my own clients, and here we have a proposition not only endorsing what these municipalities have done before, but proposing to tell the cities of Alabama that they may go ahead and put down any character of sidewalks, pavement, sanitary and other sewerage and issue bonds and compel the people to pay such bonds.

We have some instances of that kind in the city of Montgomery. We have what is known as the baby bond, where in direct opposition to the wishes of the property owners and over their protest, the municipality of Montgomery has undertaken to pave with brick certain streets and assess the entire cost against the abutting property owners. The injustice of that is apparent to everyone. Here is a man who owns fifty feet, and under the baby bonds he is compelled to pay something in the neighborhood of \$500 for alleged improvements to his property. It would be something fair and just if the owner of the abutting property was assessed for these improvements the actual increase in value that his property made by reason of such improvements, but it is gross injustice and oppression to say that he should pay the full price of the improvement which is for the benefit of the entire municipality when, as a matter of fact, where he goes upon the improvement once, the rest of the inhabitants go a thousand times. Then the proposition is suggested that the entire cost of the sanitary sewerage or sewer which may drain any property owned by other citizens should be assessed and collected against the citizen and not from the municipality.

I say no such proposition can meet the approval of a man who is opposed to oppression and for the people.

MR. WATTS—My distinguished friend from Montgomery totally misapprehends the resolution of the gentleman from Lauderdale. There is no proposition in that resolution which fixes the cost of any pavement or any street improvement upon anybody. It simply says that any debt which the city may owe for street improvements or for water-works or for sanitary sewerage, shall not be included in the 7 per cent. The gentleman has not read the substitute, or I am satisfied that he would agree with me readily that it does not effect the purpose he speaks about.

MR. MACDONALD—The gentleman is mistaken; I have read it.

MR. WATTS—The proposition of the gentleman from Lauderdale is simply that the limit of city taxes shall not be exceeding 7 per cent, and when you count the 7 per cent, you are not to count bonds issued for water-works, for sanitary sewerage and for paving as a part of the 7 per cent. He does not propose in

that ordinance to authorize the cities to charge either the whole or a part of any improvement upon the property owners. It simply says it shall not include in the seven per cent debts for these purposes.

Now, I desire to state to the Convention in addition to what my friend from Lauderdale has stated, about the ownership by the city of these utilities: A striking example is the city of Montgomery. The city of Montgomery paid \$600,000 for her water works. She issued bonds to pay for that. Those water works can be sold today at a cash profit of \$200,000 and those water works bring in an income to the city of Montgomery after furnishing, free water for all the purpose of the city, which more than pays the income on the \$600,000 of bonds. Therefore, it seems to me that is not a bad investment on the part of the city of Montgomery. I simply speak of this because I saw my friend from Montgomery (Mr. Macdonald) had misunderstood the proposition of the gentleman from Lauderdale and I simply ask him to get it and read it to see that I am right.

MR. SOLLIE—I shall not attempt to speak at length this time. I wish to second the first of the two gentlemen from Montgomery who spoke against subdivision C in these exceptions. I agree with the last gentleman who has just taken his seat that this provision is not an express conferring upon the municipalities of the power to assess adjacent or abutting property for street and sewerage improvements; but it recites, at least suggests, that such improvements, followed by such charges, are in contemplation of the Constitution. So, if it does not expressly confer, most assuredly it does not prohibit, that power; and there are lawyers enough in this Convention that I need not urge the recent decisions of the courts of higher resort to the effect that abutting property owners may now see their property entirely confiscated by pavements and other improvements of that kind. And I insist that of all the positions taken by courts in recent times, that position is least tenable and least just and ought most of all to be stricken down by legislative bodies or Constitutional Conventions. Is it right, Mr. President, because forsooth I have a piece of property lying down here on Dexter Avenue which happens to immediately abut the street that my property shall be confiscated, the entire corpus taken from me, and a man only fifty feet away from me shall have his property enhanced in value fifteen, twenty or fifty per cent, by such improvements without paying anything therefor. There is no justice in such a law and this Constitutional Convention while dealing with the proposition of municipal corporations should rise up and place a restraining hand upon the power of municipal corporations to bring about such a condition. Suppose the Federal Courts do so decide, they have not the power to control us in State matters and we can put in the Constitution a veto on the right of any municipality to confiscate the property

of abutting property owners under the guise of paying for these improvements.

MR. O'NEAL—Is the town in which you live interested in street and sidewalk improvements?

MR. SOLLIE—No; but I am not alone representing that town. I am representing the State at large, the best interests of all the towns. I come from a small inland town where we do not have paying admit, but who knows but that some of these days I may be where they have pavements. We are disposed to hope—my imagination looks forward to the time when my little city shall awake and move up to a point of sufficient size to be the possessor of such improvements.

MR. WEAKLEY—Don't you know it to be a fact that the Supreme Courts in every State in the United States except in the State of South Carolina have sustained sidewalk assessments?

MR. SOLLIE—That is precisely the proposition to which I am directing my argument. The courts for some reason to me unknown have taken the most ridiculous position that a municipal government can absolutely confiscate the property of its citizens to make these improvements.

MR. O'NEAL—Don't the property receive benefit?

MR. SOLLIE—Yes; and so long as the court stood by the doctrine that the adjacent property might be assessed to the extent of the improvements or enhancement of the value of the property. I was willing to admit the decision was correct. Even in that case, I insist that it is unjust that the adjacent property should bear the whole expense of the improvements up to the enhancement of the value of the property that does not abut, pays nothing, and yet that property is enhanced in value.

MR. MACDONALD—Is it not easily conceivable that such improvement instead of enhancing may decrease the value, for instance that the property might be left on a hill above the street or away down below the street, and is it not a fact that the Supreme Court has held in such case that the municipality instead of collecting the cost of making the improvement may be compelled to pay damages?

MR. SOLLIE—Yes, sir. But taking it in any aspect, whether increasing or decreasing the value of the property, I take the broad position that he who happens to live nearest the street ought not to have to pay the cost of the improvement for the whole city and I say here and now while we are dealing with the proposition, while we are making a Constitution, while we are continuing to give to the municipalities the power to make streets and regulate the assessments to pay therefor, it is our duty to put a limitation on the power of confiscation by city government.



MR. FERGUSON—I desire to ask the gentleman this question: Some of the people have already been assessed to pay for this character of improvements. If we stop it now, won't it be a discrimination against a man who has already paid?

MR. SOLLIE—Perhaps it would be, but it is better to do right late than never.

MR. FERGUSON—In the city of Birmingham and Montgomery and other cities the citizens have paid this unjust tax and I ask upon the principle of stare decisis ought we not to let the matter stand? If some of the property owners in certain cities in this State have paid this unjust tax, would it not be better to let those who have not paid bear their burden?

MR. MACDONALD—Will the gentleman from Dale allow me to make a suggestion right there? Neither the city of Birmingham nor the city of Montgomery has ever assessed the entire cost against the abutting property owners.

MR. FERGUSON—I will ask the gentleman from Montgomery a question.

THE PRESIDENT—The gentleman is out of order. The gentleman from Montgomery has not the floor.

MR. FERGUSON—Then I will ask it of the gentleman from Dale. Have you any city in your county which has paid this tax?

MR. SOLLIE—We have not. We happen to be a rural people in our county.

THE PRESIDENT—The time of the gentleman has expired.

MR. ROGERS (Sumter)—I yield my time to the gentleman from Dale.

THE PRESIDENT—The gentleman don't seem to have any time to yield. Gentlemen are at liberty to yield or not to interrupt, but the Chair cannot take the interruptions out of their time.

MR. SOLLIE—I shall take lesson by my experience.

MR. CHAPMAN (Sumter)—If I heard correctly the clause now under consideration, the Chairman of the Committee on Municipal Corporations says that his proposed amendment is an exact copy of Section 8 of his report. Am I correct in that?

MR. WEAKLEY—Yes.

MR. CHAPMAN—Then, if that be the case, Mr. Chairman, I see absolutely no limit to the power of corporations to tax the people. There is absolutely none if I correctly read this Section. It says that "no city, town or village shall hereafter become in-

debted for any purpose or in any manner, to an amount which including existing indebtedness, shall exceed 7 per cent. of the assessed valuation of the real and personal property within such city, town or village subject to taxation as shown by the last assessment for State and county purposes." Now, Mr. President, that sounds very much like there is some limitation on the part of taxation and of creating indebtedness. But when we read further and include the proviso which says: "Provided, however, that in determining the limitation of the State, city, town or village to incur indebtedness, there shall not be included the following class of indebtedness, to wit: Now, none of the classes enumerated here below are included in that 7 per cent., and the town, city or village may go on and create indebtedness into the millions of dollars and yet not be precluded or prohibited by the first part of that clause.

Request was made that the speaker read the Section.

MR. CHAPMAN—The first Section is not to be included in that 7 per cent. limit. "No certificate of indebtedness or revenue bonds issued in anticipation of the collection of taxes unless the same be not paid within two years from the date of such issue, and all such notes, certificates of indebtedness and revenue bonds shall be provided for and be made payable from the taxes levied for the year in which they are issued, and shall not exceed the amount of such taxes." Now it don't make any difference how far you go in making that exception. You may have a million dollars of notes out, and it don't limit the issue of notes and bonds to any past time, but at the same time you are levying a tax of 7 per cent. you may be issuing notes and certificates of indebtedness under Class A. Now, here is Class B:

(b) Bonds issued for the purpose of purchasing or otherwise providing for a supply of water or for the construction or installation of sanitary sewers, or for the extension of either of the same.

Now, until a proper construction of the language used, it appears to me that while that 7 per cent is levied for some other purpose, the town might go on and issue bonds to an indefinite amount, and this Class C obligation, bonds issued to procure means to pay for streets or sidewalk improvements or storm water sewers, the cost of which is to be assessed against the property abutting or drained by such sewers. As the gentleman from Montgomery, Mr. Macdonald, properly says, it would be an absolute tax imposed upon the abutting owners of property and that would not be covered in the 7 per cent it is true, but you are taxing the individual who happens to own an abutting piece of property for sewer or sidewalks, and that is not limited by the 7 per cent, because the town may place side walks and sewers

along the whole street and yet not pay one dime of it under this clause, under the tax levied under that 7 per cent limit. So with debts created for the preservation of the public health. That is exempt. The town may deem it proper to create a debt of \$50,000, during the same time it is levying the tax of 7 per cent, and yet it is not limited or covered by the 7 per cent. Debts existing on the 6th day of December, 1875. That is an indefinite quantity, it may be great or may be small, they may have been renewed up to the present time with accruing interest, so it seems to me that this clause as it stands now is absolute death to a people or corporation, and they may be absolutely ruined if it is adopted into this Constitution.

MR. EYSTER—I move the previous question.

MR. COLEMAN (Greene) — I wish you would withdraw that motion for a moment.

The motion for the previous question was withdrawn.

MR. COLEMAN (Greene)—Mr. President and delegates of the Convention, it seems to me that there has not been a more dangerous proposition submitted to the delegates of this Convention than that submitted by the amendment of the gentleman from Lauderdale. The Section as proposed by the Committee on Taxation makes ample provision, as I conceive, for all existing indebtedness, and simply provides a limitation as to future indebtedness. A good deal has been said in regard to rural towns. I wish to state to this Convention a fact which I did not intend to mention, as I live in a rural town, and which came very near being ruined by existing laws. We have a population of about 800 only, and assessable property at \$200,000, and we are today laboring under a debt of \$1,800 per year for thirty years, amounting to \$54,000. With what to pay for it? An assessment upon \$200,000. Some gentleman has asked: "Have you sidewalks?" I say we have not, we have not the means of raising the money for sidewalks, it all goes for the purpose of water works and electric lights, and as long as the system prevails that a delegate from a county can come up to this legislature without limitation on him and get a bill through affecting his county without respect or regard to the wishes of the people, just so long will every county be in danger, so long as there is no limitation upon the power of taxation. That is not all. Following upon this contract was an application made to the legislature for that little town to issue \$45,000 of bonds to buy water works, in excess of what it was prior to its being passed. That is the protection that the people of this country desire, and that is what they must have. We know nothing about the cities and towns that speak of their \$200,000, their \$2,000,000 and their \$5,000,000, perhaps they are able to stand it, but let there be some limitation, or else the little country towns where much of your wealth and taxes

come from, will be left in a most deplorable condition. What objection can there be to Section 10 as amended by the Chairman of the Committee? "Section 10. No city, town or other municipal corporation shall become indebted in an amount exceeding five per centum of the taxable value of the property thereof." Make any estimate, take any town you see proper—say one of \$200,000, 5 per cent is \$10,000. Isn't that enough for a town of that size to go, or one of a million dollars in the same proportion. "Provided, that for the erection or purchase of water works, gas or electric plants, or sanitary sewerage, an additional indebtedness not to exceed 3 per cent may be created; provided, further that this Section shall not apply to indebtedness in excess of such 5 per cent already created or authorized by law to be created." Nobody can be hurt, all previous creditors are provided for, and you protect the town against future indebtedness.

MR. HARRISON—I heartily indorse what has been said by the delegate from Greene. I admit my astonishment that an amendment should come from the gentleman from Lauderdale allowing cities and towns to incur an indebtedness of 7 per cent. and he himself introduced a resolution limiting the counties to 3 per cent which must necessarily contain within their borders all the cities and towns of the State. I had the pleasure, Mr. President, of introducing an ordinance on this section limiting this very tax to 3 per cent. I did it after careful examination and deliberation and after consulting financiers in the State, and after making the figures, and I ask the delegates here, whether their towns be large or small, take for instance a town with \$1,000,000 worth of property, we limit them in the present Constitution, and we are pledged, as Democrats, not to raise that limit to one-half of one per cent. A million dollars worth of property would raise \$500 at 1-2 of 1 per cent, if I make no mistake in my calculation.

A DELEGATE—\$5,000.

MR. HARRISON—That is it; you raise \$5,000. Now, at 7 per cent you can issue \$70,000 worth of bonds. If you can get it for 5 per cent. the interest on these bonds alone will be \$3,000. Now, I ask you, where is the city or town that can live and run its municipal government, police force and other expenses, on less than 1-2 of 1 per cent. You will default in the first instance, to say nothing of the exceptions pointed out by the gentleman who preceded me—notes, certificates, etc., to cover all the debts of a city. In other words, it is letting the bars down so completely, or so nearly so, I apprehend we will have more bankrupt cities and towns—a great many more than we have now. I look at the report on Municipal Corporations, and I find they are undertaking to exempt certain cities and towns. That may be all right when we come to it. I understand that perhaps the very city that the distinguished gentleman comes from, of which he is the Mayor,

is itself badly in debt. I know there are other cities in debt.

MR. WEAKLEY (Lauderdale)—Will the gentleman permit an interruption?

MR. HARRISON—I like to be polite—if they don't limit me, or take it out of my time.

MR. WEAKLY—The city of Florence has a bonded debt upon which it has paid the interest. It does not owe a dollar in the world, and has \$5,000 in the treasury.

MR. HARRISON—If you are that well off, I don't think you will need go out and levy the extraordinary expense. I heard the gentleman before the Committee on Taxation; we heard his argument, and it was considered by the Committee on Taxation before this very section was adopted. I appeal to the members to look at the tax lists of their towns and see where they will be. I know my own town, if it made it 5 per cent, it could not pay and it would be in default and repudiation.

If there is a city or town in this condition, it is but a stronger reason why the Convention should apply the brakes now and protect others. Cities and towns, like individuals, should be made to live within their income. This extravagance of beautifying, ornamentation, etc., is all right, and we love to see it, but I submit we are pledged here to the people of Alabama in this Convention that we shall not raise the rate of taxation, and we ought to be honest. We cannot raise it. I have no idea that the delegates on this Municipal Corporation Committee will ask us to raise the limit on cities and towns beyond half of one per cent. If one-half of one per cent will not allow them to pay more than 5 per cent—I regard that as the maximum—I yielded to it simply to have unanimity on that report. I believe it is possible we may go to 5, but I believe 3 is safe and conservative, and the city—smaller and with less property than the county—ought at least be brought down to the limit of 3 1-2 per cent, which the Convention has passed after a long discussion and test vote; we should not allow the cities and towns greater taxes, a greater rate than the county. We fixed that after examination of figures; the Convention itself fixed it at 3 1-2 per cent. Certainly, the ability of the county is greater than that of the town. Why should we adopt this amendment when the mover of this resolution himself stood by us in reducing from 5 to 3 1-2, and he now undertakes to tax the people or authorize indebtedness against the people of the cities and towns up to 7 per cent, with a dozen or more exceptions, which, to my mind, seem to be indefinite. So far as these exceptions are concerned, I would rather have no limit at all, because it is as much as to say to these people that we, as delegates in Convention assembled, have considered the matter and fixed the rate to which it can go with safety, but I do not believe the average city or

town would dare undertake to do this, and we are doing ourselves injustice, we are doing wrong to the cities and towns to even say for one moment, you can incur the extent of indebtedness authorized by the substitute. I therefore hope, Mr. President and delegates of the Convention, that you will look into it. As has been well said by my distinguished friend from Greene, to my mind, it is the most dangerous ordinance or attempt to amend an ordinance, made in this Convention since we have convened. I appeal to you, look into it. Apply it to your own municipalities. Look at your tax lists and see if it does not mean danger of repudiation whenever we come near the 7 per cent mark. It is a continuation of that spirit which is going over the cities and towns of Alabama and taxing every man, woman and child in business. Why, the very spirit, if not the letter of the Constitution, is being violated. It is our duty to stop it, and prevent them from incurring this indebtedness that will inflict such taxation not only upon property, but upon business and occupations in the country. I feel it is our duty to put it in the fundamental law of the land, that if there is any city has gone beyond it, let them come up like Colbert and we will make exceptions as to them, but for those who have not reached that far, I appeal to the delegates of the Convention to come up with a strong arm and say: "thus far shalt thou go, but no farther."

MR. GRAHAM (Montgomery)—I wish to state, Mr. President, in order that the members of the Convention may not misunderstand the position I propose to take upon this floor that I favor a limit on municipal taxation. We are here assembled in a sovereign capacity for the purpose of framing a Constitution which is to wisely govern the entire people of the great State of Alabama, and yet in the very beginning of those deliberations, distinguished gentlemen upon this floor have their hands upon the throats of municipalities of the State attempting to choke the very life out of them. Distinguished gentlemen are here for the purpose of deliberating and framing fundamental laws for the government of all the good people of the State of Alabama and not to retard the prosperity of any. Why, sir, a mad bull is made madder by flaunting a red flag in his face, and the gentleman, my colleague (Mr. Macdonald) could not be made madder upon any question than by flaunting in his face the red flag of increased taxes in municipalities, as administered by the municipal authorities of this city. It is his nature, I don't blame him for the position he takes. He has been litigating at every point, not only before the Supreme Court of Alabama, but before the Supreme Court of the United States, and they have in recent decisions delivered, absolutely trampled the position assumed by him, under foot, and yet after all these decisions, he comes up smiling and says he will look and see what the Supreme Court of Alabama will again say upon the subject and he is now before the Supreme

Court of Alabama testing a question, though the decision of the highest court in the land is against him. The case of village of Norwood vs. Baker, decided by the Supreme Court of the United States, was seized upon by the gentleman and others interested in this class of litigation to cry "Confiscation! confiscation!!" and yet the very first time the Supreme Court of the United States has an opportunity to pass upon, compare and distinguish this case with that of Parsons vs. the District of Columbia, they made the distinction so clear that the yell raised by the gentleman and others, that it was confiscation, sank so far in the minds of all reasonable men, that he does not dare raise it again. The case of Birdsong vs. city of Montgomery was a notable one and was decided against him. The Supreme Court of the United States has since that time also decided the proposition against him. In the city of Montgomery we have an indebtedness of about two million dollars. Five hundred thousand of it we have been laboring under for many, many years. It was appropriated by a Republican administration to the building of a railroad under certain conditions which were never complied with, but the bonds were used for the purpose of building the railroad. Six hundred thousand dollars of our indebtedness was caused by the purchase of our water works, and I defy any man on the floor of this Convention to take the report made by the Water Company and compare it with the report made by the city of Montgomery, and not say it was a blessing that the water works are owned by the city.

MR. SANFORD (Montgomery)—The waterworks add a revenue to the town, nobody objects to that.

MR. GRAHAM (Montgomery)—I have heard my friend before, for whom I have great respect and almost affection. I have heard him before, there is more bluster in him than anything else. We have a condition existing in this State, Mr. President, in respect to our municipal corporations and this Convention ought to meet it like brave men and not like cowards, they ought to settle this matter in a way that will bring the "greatest good to the greatest number" of people that live in these cities, and if they fail to do it, they will fail to discharge one of the greatest duties enjoined upon them when called upon to assemble in this Convention and legislate for the people. There is a condition existing here which we are bound to meet even though the limitation is put down to 5 per cent. In the language of the gentleman from Lee, municipal corporations, cities and towns, extending from the boundaries of Tennessee to the Gulf of Mexico will go down into the depths of bankruptcy. That condition exists. Is it our duty to jump on those that are down and trample the last particle of life out of them, or is it our duty to go to them with a helping hand and ask if we can render them assistance? and, if answered in the affirmative, to render them the assistance which we ought to render?

MR. HARRISON—Render assistance, but don't bring all the others down.

MR. GRAHAM—Yes, render assistance—I understand the motive of the gentleman who makes this argument — my distinguished friend, whom I helped in this House in 1882 to save his county from a condition of utter helplessness.

MR. HARRISON—A burnt child dreads the fire.

MR. GRAHAM—Yes, when you get a fellow well burnt, the least little flame that comes around runs him crazy. That's the condition of my friend from Lee. The exception that is made here is in the interest of these municipalities. The city of Montgomery, as I stated before, owes in the neighborhood of two millions and unless relieved by legislation in this Constitution we will go to the wall.

MR. COLEMAN—Does not this meet your case: "Provided, this limitation shall not apply to indebtedness already existing or authorized to be created?"

MR. GRAHAM—No, it will not, Mr. President, every man that comes to the city of Montgomery, the capital of the great State of Alabama, admires its condition. If our streets were in the condition they were twenty years ago, there would be fifty men on this floor who would get up and ask to have the Capitol removed to Birmingham, or some other city in Alabama.

MR. COLEMAN—Do you propose, then, for all the towns of the State to be taxed in order that the Capitol be kept here in Montgomery?

MR. GRAHAM—No, sir; but if that law is passed, the very life of every municipality in this State will be choked out of it—

MR. MACDONALD — Do I understand you as advocating that the total cost of sidewalks, street paving and sewers should be taxed upon the abutting owner?

MR. GRAHAM—No, sir, and the amendment of the gentleman from Lauderdale does not say anything of the kind. I say that the city at large ought to bear a proportion of the expense of paving, that it ought to do its share. All of us are living on the streets and ought to bear our proportion. I appeal to the delegates of this Convention after the manner of my distinguished friend from Lee, to save the municipalities of the State from destruction which is threatened here by the position taken by distinguished gentlemen on this floor.

MR. CHAPMAN — Would it serve your purpose to have Montgomery excepted from the general law?

MR. GRAHAM—I don't want to play the dog in the manger.



MR. CHAPMAN—You don't want to put all the other dogs in, do you?

MR. GRAHAM—No, sir.

MR. SANFORD — I did not expect this discussion upon Montgomery affairs would be precipitated so early in the session of this Convention, and I would hardly have spoken this afternoon but for the very unkind remark of my friend who loves me so well that he speaks of me as being "full of noise" and having "heard me before." I have heard him before the people and generally the people have endorsed the opposition to him. You cannot find an ex-Alderman or an ex-Mayor or an ex-City Attorney who is not for all these exactions in favor of municipalities and against the people.

What have we done here in Montgomery? I tell you gentlemen it has been confiscation. Men have left the city. Men have houses in Montgomery for which they can never pay owing to the debts on them for pavements and sidewalks and tessellated streets, and Belgian blocks, and there is starving inside of their houses. And they call that benefiting the property! Every tile takes that much bread from the mouth of some man who works day after day for his daily bread. Why, only the other day a citizen said to me, "Colonel, if they carry out their project of paving the streets as they are doing now, I will have to sell my house and move away because I will be unable to pay the cost of the benefits." You take away the shelter of the poor man who works day after day for his daily bread and that of his family, and you take away all the hopes of his life. When he has made a little money and put it in a homestead you come along and say "we will pave these streets with Belgian blocks and tessellated streets," and for what? Simply in order that some gentleman from Boston may walk the streets and say what a beautiful town Montgomery is." That don't feed the poor man.

How many white people have you in Montgomery? Thirteen thousand white people. Its population is supposed to be according to the census 30,346, but 17,000 of them are negroes. Of course they are not tax-payers. And of the thirteen thousand white people, how many are tax-payers? Five years ago an inquiry into that matter was had and there were seventeen hundred tax payers in the city of Montgomery. And all this great indebtedness is a burden upon those people. Now, I know whereof I speak. One of the finest establishments in Montgomery is today under a mortgage which the young men owning it are laboring day after day simply to pay the interest and it will finally be swept from them. Another young man has a house which he inherited from his father and he has said: "You can take my house for the pavements and the supposed benefit." These are facts. Your bankers have moved from Montgomery. Men who owned

houses on the prominent streets have gone to the country, gentlemen of fortune, have built outside the city. I know that less than twelve months ago there was a meeting of the citizens to consider these matters, and there, sir, I know you heard my voice protesting that this taxation would amount to confiscation. These are facts about this thing and yet we have gentlemen who would tax you still more. What benefit are brick streets to a man who works day after day for his bread. How do brick streets benefit him? And yet you say to him "you must pay these taxes" when he can barely support those dependent on him. And these officers who have been paid by the municipalities are always shocked by the voices when they appeal for the people and against grasping municipalities. I am glad to say that if my voice is harsh the people have heard it. Today a man said to me, "For God's sake don't let them continue this system of government. We rely upon you and our other friends to prevent that." And I stand here today protesting against any such proposition which has been so ably exposed by the gentleman from Greene and the gentleman from Lee and which was defended by my two colleagues from Montgomery, one an ex-alderman and the other an ex-city attorney and mayor. That carries out what I said that that class is always asking for power for municipalities against the people.

They say that we are choking municipalities to death. Who are the municipalities? Are they not the people? When we say the city of Montgomery, it has no existence apart from the people who compose it, John Sanford and George Macdonald and James Smith, and others. We are protecting the people against these grasping municipalities and you will hear our voices before this Convention adjourns in more forms than one.

Gentlemen of the Convention, I hope you will listen to the eloquent appeals of the gentleman from Lee, to the earnest and truthful argument of the gentleman from Greene and even to the voice, and nothing but voice, but with a great deal of heart and sincerity and earnestness for his people. I hope this amendment will be defeated by an overwhelming majority.

MR. PILLANS—I offer an amendment.

MR. HARRISON—Is not there already an amendment to an amendment?

THE PRESIDENT—Yes, the Chair will state to the gentleman from Mobile, that the gentleman from Talladega offered an amendment to the Section and the gentleman from Lauderdale offered an amendment.

MR. PILLANS—Then my amendment is not in order?

THE PRESIDENT—Not at this time.

MR. COLEMAN (Greene)—The amendment of the gentleman from Talladega was simply a change in phraseology. It was really no amendment.

MR. BROWNE—When the gentleman from Lauderdale was offering his amendment, I begged the Convention to allow this little verbal amendment of mine to be gotten out of the way but it was declined. Now I ask unanimous consent that the amendment offered by the Committee be taken up and disposed of in order that the gentleman from Mobile can offer his amendment. The amendment of the Committee is only a formal amendment.

THE PRESIDENT—The gentleman asks unanimous consent on the part of the Committee to incorporate that amendment. Is there objection? The Chair hears none and the amendment will be made and the gentleman from Mobile can now send up his amendment.

The amendment was read as follows: Amend the substitute by striking out paragraphs A and D.

MR. PILLANS—I will ask that the clerk read paragraphs A and D of the substitute offered by the gentleman from Lauderdale.

The sections were read as follows:

(a) Notes, certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, unless the same be not paid within two years from the date of such issue and all such notes, certificates of indebtedness and revenue bonds shall be provided for, and made payable from the taxes levied for the year in which they are issued, and shall never exceed the amount of such taxes.

(d) Debts created for the preservation of the public health.

MR. PILLANS—The object of this amendment is to make the substitute which is offered, and which contains a limitation upon the indebtedness which a municipal corporation can subject itself to, not applicable to the following extraordinary matters, to wit: (b) bonds issued for the purpose of purchasing or otherwise providing for a supply of water or for the construction or installation of sanitary sewers, or for the extension of either of the same, (c) obligations incurred and bonds issued to procure means to pay for street or sidewalk improvements or storm water sewers, the cost of which is to be assessed against the property abutting or drained by such sewers. (e) debts existing on the 6th day of December, 1875, or any obligation issued to renew or refund the same.

The purpose of the amendment therefore, is to make it plain

that these extraordinary indebtednesses, above the limited indebtedness of 7 per cent shall be confined to these three subject matters, namely, the providing of water for the people, putting in sanitary sewers, and debts existing at the time of the adoption of the constitution of 1875, and obligations for street improvements or storm water sewers, which are assessable in whole or in part against abutting property owners.

MR. deGRAFFENREID—Why do you not put lights in there as well as the other?

MR. PILLANS—Well, because that is a part of the ordinary municipal expenditures, and I agree entirely with the Committee in not putting lights and so on in, and I will give the reason. The city I live in, which happens to be the largest in the State, notwithstanding that it is doubted by some of my friends here has been lighted for many years by electricity, and was lighted for a great many years, of course, by gas. It has never had a municipal electric lighting plant, except after electric lighting came into vogue we tried electric lighting I think once by municipal ownership, and we did not find that it paid at all, and today we have no thought or idea of putting in an expensive plant to be operated by politicians in competition with private parties. Now if in other places you find it will pay better for the city to own the lighting plant, let them have it, but all of that is a matter that ought to be paid out of the seven per cent limitation, or whatever limitation this body fixes as the limitation for the ordinary indebtedness of cities.

Now, to speak particularly to the matter of street improvement bonds. If there shall be a limitation put into this Constitution upon the power of cities to incur debts or five, seven or three per cent., the cities of Alabama which have already incurred more than that amount of bonded indebtedness can never incur a debt to the extent of one penny. That is plain. Therefore, every one of those cities will be unable to incur one dime's worth of debt for street improvement or pavement, or for water works, or any other thing, and particularly for street improvements, which while apparently an indebtedness of the city, and temporarily an indebtedness of the city, will be, in part at least, paid by the abutting property owners, and I am sure it will not be the policy of this Convention to cut off from the progressive cities of Alabama, large and small, the right and power to do what other cities in every portion of the United States do, and that is improve their streets, and pave their streets, as Montgomery has done, by assessing part of the cost of the pavement against the abutting property owner.

MR. HARRISON—Do you know of any city in the United States that has larger indebtedness than that proposed?

MR. PILLANS—I can name the city of Mobile. It has a twenty per cent. indebtedness right there, and we are asking this Convention to enable us to pave our streets. The pavement we used to have, shells and cobble-stones, has been taken out, as it has become useless and we have got to repave, and we are now about to do it, and I speak from the standpoint of a property owner who will have to pay heavily and severely for this improvement.

MR. HARRISON—You have a right to double taxation now, an additional one-half.

MR. PILLANS—Oh, we pay three-quarters of one per cent to our old creditors and we have three-quarters of one per cent for the maintenance of the city, and the three-quarters of one per cent for the maintenance of the city will allow us to do no paving.

MR. O'NEAL (Lauderdale) — What was your purpose in striking out (D) "debts created for the preservation of the public health?" I want to make this suggestion. Suppose an epidemic should occur in some city or town in the State, and it should be necessary to go beyond the seven per cent., don't you think the city ought to have that power, if necessary, to preserve the health or life of the people? Ought their hands to be tied in the event of a great emergency of that kind, so they cannot create a debt which might be necessary to save the lives of its people?

MR. PILLANS—I will answer the gentleman by saying that I perhaps occupy a unique position, not believing in a quarantine system that is the curse of this Southern land, and has done no good, but has nearly bankrupted some of the towns, I do not believe in a time of panic, when reason is dethroned and every charlatan controls the people, and when shot gun quarantines are in effect, that it is wise to leave your municipalities with an unlimited power of expenditure and of creating indebtedness at such a time as that. That is the time of all times, when they need the restraining influence of this Constitution in the matter of their power to create debts. That was the reason I introduced that, though I will say I am perfectly indifferent personally as to that part of my amendment. The chief reason for offering the amendment was to make sure that we would not in this Constitution establish the principle that there could be no local assessments for local improvements hereafter in the State of Alabama, in cities to which these improvements are absolutely essential to the progress, health and the well being not only of every city, but every large town in the State.

THE PRESIDENT—The Chair will state that the gentleman from Jefferson has the floor and yielded to the gentleman from Mobile, the Chair understood temporarily.

MR. PILLANS—I thank the gentleman.

MR. FERGUSON—Mr. President and gentlemen of the Convention, I regard it as a most unfortunate day for the State of Alabama and any municipality within it, when any bonded indebtedness was incurred by the State or any part of the people of the State of Alabama. This, however, Mr. President, is a condition that has been forced upon us. It came upon us in the reconstruction days. It is a condition and we must confront it. We have met it by a provision in the Constitution that we are about to adopt, limiting the power of the State to contract debts by the issuance of bonds, to the extent of nine millions of dollars. I desire to say, gentlemen of the Convention that I am in favor of the lowest possible limitation on State, county and municipal indebtedness, consistent with the honor of the State, of the counties, and of the municipalities of the State.

There is a vital principle, however, involved in the question that is now before us, and I outlined that by the question that I put to the gentleman from Dale. That question is this: in the city of Birmingham, and I have no doubt the city of Montgomery, and in other large cities of the State, this abutting property tax that the Supreme Court has declared constitutional, has been fixed upon a majority of the property owners and the property of those cities. There is a standing decision of the courts that I think the Convention should stand by. I rise, Mr. President, to speak to the exception. In the amendment introduced by the gentleman from Lauderdale that this character of indebtedness that has already accrued within certain cities of this State shall be excepted from the general operation of the ordinances we are now about to adopt, is eminently fair, it is eminently just, and stands by the law that has been laid down by the Supreme Court of Alabama in this particular premises.

Now, gentlemen to show you how unfair it would be at this time to exempt those cities that have already paid that tax, I will ask you this simple question: If those that have not paid have not already gained the benefit of those that have paid this onerous and burdensome tax? I do not know what the figures are, and do not undertake to give figures, in the premises, either for the city of Birmingham, or any other city in the State, but I would say at a hazard, that in the city of Birmingham, perhaps two-thirds of the citizenship within that city owning property have paid this tax, and that two-thirds in value have paid this tax. That would leave then one-third of the citizenship and one-third of the property that have not sustained the burdens of any of that tax. Those that have not paid it have gained the benefits arising from the payment of that tax by those that have paid it.

MR. KYLE—Do you hold that it is just because you have

wronged two-thirds of your citizens, to wrong the other one-third to make them equal?

MR. FERGUSON—I say let the decisions of the State courts stand as they do on every other question involving property rights in this State. The time has not been within the history of English jurisprudence where the courts have not stood by the decisions of the courts where property rights intervened, or became involved, no matter how oppressive the measure may seem. Every lawyer on this floor knows that to be the law, and I say identically the same principle should prevail in this sort of a tax.

MR. MACDONALD—Has it ever been decided by the Supreme Court of this State, that the simple cost for such improvement should be assessed against the abutting property owner?

MR. FERGUSON—I have not understood that the amendment in any way proposes anything of that sort. If the gentleman will show me anything in it that proposes anything of that kind, either by the amendment of the gentleman from Lauderdale, or the ordinance reported by the committee, I will abandon any position that I have taken in the premises.

MR. MACDONALD—Have you read the substitute offered by the gentleman from Lauderdale?

MR. FERGUSON—No; but I have heard it read, and I do not understand that it proposes any such thing.

MR. MACDONALD—If my friends will read it more carefully, he will see.

MR. FERGUSON—As I understand the amendment offered by the gentleman from Lauderdale, it simply proposes to except from the provision of this ordinance those debts, and that bonded indebtedness, that is already accrued, by reason of the assessment of these damages against the abutting property. Am I correct in that?

MR. WEAKLEY—You are.

MR. FERGUSON—That is the way I understand it. Now, what I mean to say Mr. President, is that the only limitation whatever that I care about in the bonded indebtedness of a city, is that which will protect the honor of the city; that which will give it credit in the financial world; that which will not burden the citizens of the community, nor burden the property to that degree where it will amount to a confiscation of property.

I believe as much in low taxes, Mr. President, as any man upon this floor, but as I understand the proposition of the gentleman from Montgomery, and the gentleman from Dale here, to strike out that part of the amendment offered by the gentleman

from Lauderdale, it would have the effect of letting those people owning property in those cities who had not paid their taxes, to get the benefit of those who had already borne its burdens, and if that is the purpose of it, I am opposed to it.

MR. CUNNINGHAM—Will the gentleman permit a question. Does the gentleman hold that assessments made and contracts let under the present Constitution will be rendered void by the section of the committee's report relating to this question.

MR. FERGUSON—I am unable to answer the gentleman on that.

MR. CUNNINGHAM—In other words, would it go back; would it be retroactive?

MR. FERGUSON—I will answer the gentleman to this extent: If the money is already paid, why then they are concluded by it.

MR. CUNNINGHAM—The point is this: assessments that have been made and that have not been paid—would they be rendered void, or vitiated by this proposed provision in the Constitution? My understanding is that it could not be made retroactive.

MR. FERGUSON—Well, I expect under the Constitution of the United States, affecting the obligations of contracts that have been entered into, that is, if any man acting under the influence of those contracts had done any work, why the contract would still hold good. I believe that to be the law of the case.

MR. O'NEAL (Lauderdale) — Will the gentleman allow a question, which I propound for information. Many of us do not understand this question very fully. If this limitation as to bonds to procure the means for street and sidewalk improvement is stricken out, I desire to know whether or not cities like Birmingham, Huntsville, Florence, Montgomery, and other cities of that character, would be precluded from the improvement of their streets or sidewalks in the future on account of the fact that they would exceed the limitation of 7 per cent? Would it have that effect?

Now this provision prohibits any city contracting a debt in excess of 7 per cent. Now Birmingham already has a debt of 15 per cent. Would it prohibit cities of that kind, or would it prohibit most of the cities in the State, from continuing the present system of street improvement by assessing it against the property owners?

MR. FERGUSON—I candidly confess I am unable to answer the gentleman in that respect. I have not given enough consideration or thought to the subject.



THE PRESIDENT—The time of the gentleman from Jefferson has expired.

MR. LOWE (Jefferson)—Mr. President, some allusion has been made by one of the distinguished gentlemen who has preceded me in debate to the fact that those who have been connected with municipalities in official positions were all one way upon the proposition that is now presented to this Convention. I assume that that will not be construed to weaken the force of the contention, when it appears to this Convention that those who have been honored by the people, among whom they live, by election to the office of Mayor, or Councilman, or City Attorney, and that all of those in fact, whose attention has been particularly called to these matters, should stand as one man upon this proposition, certainly ought not to a fair-minded man prejudice the proposition itself.

Mr. President and gentlemen of the Convention, I submit to you that to adopt Section 10, as reported by the Committee on Taxation, will stop the wheels of progress in the city that I come from. I believe, gentlemen of the Convention, that Section was prepared without consultation with those who had in their hands by virtue of the suffrage of the people of that community, the welfare and destiny of the community. I dare say that that provision was adopted with those who had expert and intimate acquaintance and knowledge with the methods, and result that are sought to be obtained in that community. Else they would not have submitted this report.

I say, and I say it deliberately, that the adoption of that provision as embraced in Section 10, even as amended, will stop the wheels of progress where they are in my city. We have as this Convention knows, in the lifetime of all of us who sit here, and within less than a generation, converted a city into a wilderness, and that is not done without the expenditure of money. (Laughter.)

A gentleman has corrected me; we have converted a wilderness into a city, and your grandchildren will not see that city converted into wilderness unless this Convention lays its ruthless hands upon her today. (Applause.)

This Convention, gentlemen, was brought here to deal with matters general. They are seeking to regulate matters special. They seem to have forgotten the time-honored Democratic doctrine of local self-government. They are unwilling, forsooth, because some of the gentlemen boastingly assert that they come from towns that do not have sidewalks and sewers, without consideration, or a study of the problem that my people are trying to solve, to say that Birmingham shall have sidewalks or sewers. Why, sir, it is a cruel proposition. We have now, after many

years of struggling, arrived at a system of sidewalk and street improvement, and sewer improvement, by which the least hardship falls upon the people, and all of the people in that community, I might say almost without exception, are satisfied with it. Why I tell you that the Board of Aldermen receive censure because they cannot proceed fast enough with the improvements demanded by the property owners. The property owners in a section of the city will come and demand a sewer, and in order to build that sewer we have to issue bonds, and then the property owner, if he chooses, may pay in cash his assessment, or he may pay it in annual installments for ten years. The city seeing the danger, declined to proceed further until the bonds to be issued upon the work should be sold. Then they came in many instances guaranteeing themselves to take the bonds, in order that the work might not be retarded.

Now this provision would prevent all that. That bond is the indebtedness of the city, but it is secured to the city by a first lien upon the property improved by it.

Can a city grow without sewers? Can a city thrive without streets and without sidewalks? I say no. I say that the people in Birmingham who are bearing the burden have not uttered a cry of complaint. There has not been the suggestion of complaint from them. I tell you, gentlemen, they are not only satisfied, they are more than pleased with the existing conditions and the laws under which those great works of public improvement are being carried on there.

Why, our county is now engaged in building a sanitary sewer that will cost over five hundred thousand dollars and may be three times as much, but then we are building a great community.

Gentlemen, this says "no city, town or other municipality shall become indebted in an amount exceeding five per centum of the taxable value of the property thereof." Birmingham is now exceeding it by ten per cent. Therefore you say to Birmingham, although our credit is still good, we are paying the interest on our bonds, we are maintaining our credit at home and abroad, and it becomes necessary sometimes in advance to discount incoming receipts from taxes in the course of current affairs, from day to day, or month to month, and we never have the slightest trouble.—

MR. WHITE—Is it not the fact that we have the means of paying that other cities have not, by the means of the amendment in the Constitution so as to allow us to levy a tax to pay it?

MR. LOWE (Jefferson)—I answer the gentleman that we have the means of paying that no bankrupt city has. We have means of paying every dollar we owe, and we now have the means of going to the banks, when our accounts are falling due

and the rates from taxes have not been received, and getting money at 4 and 6 per cent for sixty days, and ninety days, until the taxes come in. This would deny us that privilege. We would have to issue script from the minute that became a law if we fell behind or else we would have to hound the tax payers from the instant his taxes became due. Now, I am in favor of the substitute offered by the gentleman from Lauderdale. The fact that he is a mayor of a city, and the fact that he has become from the very nature of his business, as an honest and industrious man, and a faithful public servant, an expert in municipal matters, ought not to discredit his statement here. His proposition is acceptable to me. It will be acceptable to my community. The proposition reported by the Committee is destruction to the best interests of our community. It stops our streets where they are. It stops our sewers where they are, and our sidewalks—

MR. WEAKLEY—Will the gentleman allow a question?

MR. LOWE (Jefferson)—Yes.

MR. WEAKLEY—Would not the report of the Committee on Taxation make it absolutely impossible under any circumstances for the city of Birmingham to own its water works system?

MR. LOWE (Jefferson)—I am glad that the gentleman has suggested it. I was going to refer to it later. Our water works, Mr. President, are worth more than a million dollars. They are worth more than three per cent, we will say, of the taxable value of the property. This makes it utterly impracticable for Birmingham to ever own her water works, the matter that has been dear to the hearts of her people and under consideration for many years being the project for the purchase of the water works.

MR. WEATHERLY—I wish to know if it is absolutely clear that three per cent applies where the five per cent limit has been reached already?

MR. LOWE (Jefferson)—I am not sure about that. I don't want to be technical about it. I want to take it in its broadest sense. I do not like to go into the details of figures in dealing with any broad constitutional question. This is no time for figuring on that seems to me.

Now, I say to the gentleman from Mobile, as to the amendment suggested by him. His amendment says certificates of indebtedness issued in anticipation of the collection of taxes, are to be included in the estimate of seven per cent. Why I say that would be ruin to Birmingham in a minute. We already owe fifteen per cent. We could not borrow a cent. We could not borrow a dollar to tide us from day to day. As it is now we can easily go to the banks and borrow from fifty to a hundred thou-

sand dollars for thirty, sixty or ninety days, on minimum interest, and yet if that provision was put in there, we would either have to grind the tax payer, or we would have to fail to pay the city employes, or issue script; practically be in a state of bankruptcy. Mr. President, what Birmingham asks of this Convention is, largely, to be let alone. We have no objection to your putting the tax limit if you choose so that that limit is so liberal that it will never endanger the credit of one city, but this is a Constitution that is to guide us for half a century—

MR. HARRISON—If we except Birmingham, are you willing to accept it?

MR. LOWE (Jefferson)—No, sir; I will not desert those who have stood by Birmingham in this hour of her peril. The Convention may except Birmingham, but there are other towns in Alabama. Birmingham is merely typical. There is Florence, there is Tuscumbia, Sheffield, Anniston, Huntsville—

MR. JONES (Montgomery)—Montgomery.

MR. LOWE (Jefferson)—Montgomery and Mobile.

MR. O'NEAL (Lauderdale)—Bridgeport and Decatur.

MR. LOWE (Jefferson)—There is every progressive town in Alabama, every town that feels the thrill of life within her being, is threatened by this legislation.

Legislation, Mr. Chairman, that was suggested by a Committee that did not call into consultation those most immediately concerned in the welfare of the communities with which they sought to deal. There is not a provision that is incorporated in section ten that is not disastrous to my community. It threatens every other town in Jefferson County. Why do you want to put shackles on the limbs of your growing young giant? Do you want to put your thriving cities in a straight jacket? Are you content to dwell in a wilderness, and drive through prairie mud to your court houses?

Mr. President, and gentlemen of the Convention, I agree with the distinguished gentleman from Greene that this is a serious question involved here. I tell you that I know my constituency, and they will rebel against the effort of this Convention, sent here to make a Constitution, undertaking to assume the functions of the General Assembly, and assume the functions of their immediate municipality boards, selected immediately by them and their neighbors, and instructed by them as to their will and their wishes. You must take your hands off of your growing cities. You must let them alone. This is no place for local legislation. You have limited local legislation by the General Assembly. The reports of your committees will prevent local legislation and rele-

gate it to the local boards, and yet this Convention proposes to tell the General Assembly what to do, and you undertake to tell the representatives of the people not only to be assembled in the General Assembly, but the representatives to be assembled in the municipal boards what to do, and you provide for what they shall do within the next fifty years.

MR. HEFLIN (Chambers)—I move that the gentleman's time be extended ten minutes longer.

MR. LOWE (Jefferson)—I am very grateful for the offer, but unless some gentleman desires to ask some questions, I should not care to consume the time of the Convention longer.

MR. O'NEAL (Lauderdale)—I desire to offer a resolution before I commence my remarks on this question.

The resolution was sent to the clerk's desk and read as follows:

"Whereas, The Fourth of July is sacred to all who appreciate republican institutions, and is in all portions of the Republic—

MR. REESE—I rise to a point of order. The consent of this House has not been obtained to read that resolution.

MR. O'NEAL—This is a privileged motion. A motion to adjourn.

The clerk continued the reading—"all portions of the Republic, wherever the flag waves,—

MR. ROGERS (Sumter)—I make the point of order that is a motion to adjourn and it is not debatable.

The reading continued—"a day of rejoicing and thanksgiving; and, whereas, the people of Alabama, in convention assembled, recognizing the glorious memories which this day awakens and appreciating that brotherly feeling which now exists between the States, and to which we owe our beautiful Federal system,

Therefore be it resolved, That in honor of Independence Day, the Convention adjourn at its usual hour until Friday morning."

MR. WILLIAMS (Marengo)—I have a substitute—

MR. O'NEAL (Lauderdale)—I have the floor.

THE PRESIDENT—The gentleman from Lauderdale has the floor.

MR. O'NEAL (Lauderdale)—On that resolution I move the previous question.

Mr. Burns of Dallas sought recognition.

MR. REESE—I call for the ayes and noes on that resolution.

Cries of “no, no.”

THE PRESIDENT—The gentleman from Lauderdale has the floor, and moves the adoption of the resolution, and upon that demands the previous question. The question is shall the main—

MR. REESE—I demand the ayes and noes.

MR. BURNS—He announced that he offered a motion to adjourn, and that is not debatable. I desire to offer an amendment.

The amendment was read as follows:

“Resolved, That the report of the Committee on the Declaration of Rights be set as a special order for tomorrow at 11 o’clock.”

THE PRESIDENT—The substitute is out of order. The question is upon the adoption of the resolution. As many as favor the motion——

MR. REESE—I demand the ayes and noes.

THE PRESIDENT—The ayes and noes are called for.

There were cries of yes and no, and a division was called for, and upon a division the vote resulted 79 ayes and 49 noes, so the resolution was adopted.

MR. COLEMAN (Greene)—I call for a verification of the vote.

MR. CUNNINGHAM — We demand a verification of that vote by the ayes and noes of this Convention.

Cries of “Too late.”

MR. CUNNINGHAM—We demand it. We make the point of order that we have a right to a verification of the vote.

Cries of “No, no.”

MR. WHITE—I make the point of order that the demand comes too late.

MR. REESE—I have been on my feet demanding the ayes and noes ever since the resolution was offered.

THE PRESIDENT—There was so much confusion in the Convention that it was impossible for the Chair to hear what gentlemen were demanding. It seems every one was on his feet clamoring for something, and it was difficult for the Chair to ascertain exactly what was demanded.

MR. REESE—If there is anything now before the House I

demand the ayes and noes on that. (Laughter.)

MR. O'NEAL — I desire to continue my remarks on this resolution.

The clock struck 6, and the Convention was declared adjourned until Friday morning at 9:30 o'clock.

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### CORRECTION

In remarks of Mr. Weakley on Page 4, fourth column near the top, the sentence, "If the Constitution of 1875 had inserted in it some limitations upon the taxing power of the cities and counties of this State to create debts, the present financial condition with which we are confronted would not exist today," should have the word "taxing" omitted.

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## THIRTY-SEVENTH DAY

MONTGOMERY, ALA.,

Friday, July 5th, 1901.

The Convention met at 9:30 a. m. pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. Patterson, as follows:

O Lord how excellent is Thy name in all the earth. Before the mountains were brought forth, or ever Thou didst form the world, even everlasting to everlasting, Thou art God. Thou art the same yesterday, today and forever. Because Thou changest not, in Thy mercy, and Thy love, therefore the sons of men are not consumed. Thy throne is the throne of glory: Thy place is the place of wisdom and of righteousness. Thou art worthy to be praised and to be held in reverence by all Thy people. As we Thy servants come into Thy presence this morning, we invoke Thy blessing and pray for Thy guidance. We thank Thee for all past blessings that Thou hast bestowed upon our country since the day of its birth, until the time when in strength and power it stands amid the nations of the earth, and we pray that Thy blessing may continue to rest upon it, and Thy presence go with us and Thy counsel and wisdom be given to direct. That all things that are done here and elsewhere in counsel and deliberation may be for the glory and honor of our God, and for the well being of all the citizens of this great Commonwealth. Be with us now we pray Thee as we wait before Thee and in the work of this day. Give us Thy presence and Thy blessing, and at last receive us to Thyself for the Redeemer's sake, Amen.

Upon the call of the roll 116 delegates responded.

Leaves of absence were granted to, Mr. Miller (Marengo) for today and tomorrow on account of sickness; Mr. Morrisette for Friday, Saturday, Monday and Tuesday next, on account of sickness; Mr. Boone for Tuesday, July 2nd and July 3rd, on account of sickness in his family; Mr. Jackson for this morning's session on account of sickness; Mr. Sollie for today owing to sickness; Mr. Graham of Talladega for Wednesday last; indefinite leave for Mr. McMillan (Baldwin) on account of sickness in his family, commencing with today; Mr. Samford (Pike) for today and tomorrow; Mr. deGraffenreid for Saturday and Monday, owing to sickness in his family; Mr. Thompson (Bibb) for last Wednesday; Mr. Howell for Wednesday last; and Mr. Freeman for Wednesday last.

The report of the Committee on the Journal was read, stating that the journal for the thirty-sixth day had been examined and found to be correct, and the same was adopted.

Ordinance No. 409 by Mr. Carmichael (Colbert).

To provide for the filing and arranging of the papers and documents, pertaining to the Constitutional Convention, by the Secretary of the Convention; also to provide for the delivery by the Secretary of a correct copy of the journal of the Convention to the Public Printer with a proper index thereto; also to provide for the superintendence of the printing of said journal by the secretary; also to make appropriations for the compensation of said secretary for his services.

Be it ordained by the people of Alabama in Convention assembled, That the Secretary of this Convention shall within forty days after its adjournment file label and arrange the journal of said convention all the papers and documents pertaining to said convention in the office of the Secretary of State. He shall also copy and deliver to the public printer the journal of said Convention with a proper index thereto within said forty days. He shall also superintend the printing, and read and correct the proof of said journal.

Be it further resolved, That for the services herein required of said Secretary, he shall receive the sum of five hundred dollars (\$500) and upon the production by the said Secretary of the receipt of the Secretary of State for such papers, journal and documents so required to be filed and labeled together with the receipt of the public printer for a copy of the journal of the convention, the State Auditor shall draw his warrant upon the State Treasurer for said amount herein provided and the said warrant shall be paid by the State Treasurer.

Be it further resolved, That there is hereby appropriated



out of any money in the State Treasury not otherwise appropriated the sum of five hundred dollars (\$500) for the compensation of the said Secretary for the said services herein required of him.

Petition No. 11 by Mr. Murphree (Pike).

The State of Alabama,

Pike County, Brundidge.

The Hons. Joel D. Murphree, J. C. Henderson and W. H. Sanford.

Dear Sirs—We, the undersigned citizens of Pike County, petition the Convention through you for the following items of interest to us to be incorporated into the Constitution.

First—We desire that the Railroad Commission that we now have be abolished and in lieu thereof create a commission to be elected by the people and paid out of the State Treasury as other officers are paid.

Second—We ask that the membership of the General Assembly be not increased before the year 1920.

We believe that the interest of the people and the State will be as safe in the hands of one hundred representatives and thirty-three Senators as with a greater number.

Third—We wish to say to you, that we have at least 4,000 farmers in Pike County, the greenest of whom know very well who pays the 50 cents per ton tax on guano.

We protest against the action of the Convention last week on that matter and respectfully ask that the question be reconsidered and future legislatures be forbidden to levy a higher tax on fertilizers than the actual expense of analysis.

If you will not do this please say in the organic law that coal, iron and other products may be taxed.

Guano is used by one class; other products by all classes.

We understand that a great lobby hovered about the Convention while this question was pending who came from all parts of the State, from the University down to the guano school, who thought it would be very unwise to do anything that would stop the collection of this tax.

We would respectfully submit to the Convention that but few of us down here knew that the Convention was doing about the tag tax and we were and are too busy with grass and weeds to journey to Montgomery to protest against an unjust tax.

Respectfully submitted,

O. E. Hightower, C. M. Swann, John A. McEachen, T. W.

Griffin, T. A. Collier, S. M. Waters, J. M. Logan, J. H. Lawson, J. B. Collier, J. E. Helms, W. D. Lee, R. O. Lawrence, H. W. Catten, G. A. Griffin, W. B. Kimball, J. B. Colley, D. C. Allen, J. W. Robinson, F. A. Waters, T. G. Carlisle, W. W. Logan, J. F. Hightower, W. L. Fleming, D. J. Helms, Jonathan Williams, J. E. French, F. C. Bass, H. P. Griffin, H. Franklin, D. D. Stephens, Fax French, E. A. Butter, A. S. Dickerson, W. H. Bolger, N. W. Galloway, Jasper Johnson, J. H. Childers, W. R. Pierson, James O. Ramsey, Joseph Shepherd, L. C. Blickinson, J. M. Conner, M. Lightfoot.

Ordinance No. 410, by Mr. Reese:

Be it ordained by the people of Alabama, in Convention assembled:

Article——

Sec. —. In all prosecutions for rape, adultery, fornication, sodomy or crime against nature, the court, may in its discretion, exclude from the court room all persons except such as may be necessary in the conduct of the trial.

Referred to the Judiciary Committee.

Ordinance No. 411, by Mr. Reese:

Be it ordained by the people of Alabama, in Convention assembled:

Article IV.

Sec. —. The Legislature shall enact penal statutes to suppress the evil habit of using obscene and profane language in the hearing of children.

Referred to Committee on Legislative Department.

Resolution No. 222, by Mr. Reese:

Whereas, the chief and most important purpose for which this Convention was called, was and is the revision of the provisions relating to Suffrage and Election, and

Whereas, more than 46 days have passed since the assemblage of this Convention without any consideration by it of said provisions, therefore

Be it resolved, that immediately after the conclusion of the consideration of the report of the Committee on Taxation, the report of the Committee on Suffrage and Elections be and the same is hereby made the special order of the Convention, and former orders and resolutions of the Convention to the contrary are hereby revoked.

Resolution No. 223, by Mr. Mac A. Smith:

Resolved, by the people of Alabama, in Convention assembled, that it is the sense of this Convention that the General Assembly should, as early as practicable, so amend the laws of said State as to more certainly punish the offense of vagrancy, which is becoming such a common and alarming evil in many sections of Alabama.

MR. SPRAGINS — I wish to offer this petition, and move that it be read and referred to the Committee on Corporations.

The motion was carried.

The petition was read as follows:

Petition No. 12, by Mr. Spragins:

Huntsville, Ala., June 12, 1901.

To the Honorables A. S. Fletcher, R. W. Walker and R. E. Spragins, Emmett O'Neal and John W. Grayson, Members of Constitutional Convention, Montgomery, Ala.:

Dear Sirs—This is to say to you that at the meeting here this evening of the Chamber of Commerce of this City, the following resolution was introduced and passed unanimously, which expresses the wishes and views of our body on the question of having a Railroad Commissioner elected and paid for by the people, and you are hereby respectfully requested, as our representatives in the Constitutional Convention, to give this matter a thorough investigation and use your influence both inside and outside of the Convention, to secure a passage of an ordinance as will give us such a commission as we desire. We believe that after investigating the matter you will find that the relief which we seek from unjust taxations, that are now being imposed upon us by the railroads of this State, could best be relieved by a Railroad Commission, elected and paid by the people. We herewith beg to give you the resolution as passed by our body and as above referred to:

"We respectfully represent that whereas the Railroad Commission appointed by the Governor and paid by the railroad has proven an entire failure, and whereas the shipper and consumer should have some representation in the naming of rates and making rules by what is otherwise alien and arbitrary power. That whereas, the express, telephone, telegraph and railroad franchises are given by the State, the power of these franchises to tax should be limited by the State. We therefore request that your honorable body will give the State Commission, elected and paid by the people, and place all franchises, which have power to tax, within their review."

We, the undersigned, are authorized to transmit you the above, which is respectfully submitted.

R. E. Pettus, President.

F. J. Thompson, Secretary.

On the call of the standing committees:

MR. COLEMAN (Greene)—I understand the report of the Suffrage Committee has been printed and is ready for distribution. I desire to state that in the first line on page two of the report, not a part of the ordinance, but the report of the committee, the word "spent" has been used instead of the word "spare". That is about the only defect I find in this copy, and I do not think it is sufficient to delay the distribution of the printed report.

THE PRESIDENT—The Chair will call the attention of the delegates to the error in the printing of the report of the Committee on Suffrage, on the first line on page two, where the word "spent" is used instead of the word "spare."

The Executive Department—

Mr. Jones (Montgomery)—Submitted a report for the Committee on the Executive Department as follows:

Mr. President, the Committee on Executive Department direct me to return Resolution No. 200, with the recommendation that it do not pass. In view of the extensive and protracted debate over the matter to which it relates, the committee deems it entirely unnecessary to make any argument in support of their adverse report.

Thomas G. Jones, Chairman.

Resolution No. 200, by Mr. Burns (Dallas):

Whereas, this Convention has seen proper to reject all amendments to Article V, looking to the relief of Sheriffs, and whereas as the Supreme Court has already been burdened with sufficient labors; and

Whereas, local government should be maintained and for other valid reasons.

Resolved. That it is the sense of this Convention that Section 30, of Article V, should be stricken out and the Sheriffs should be left on the same footing as other county officers.

Referred to the Committee on Executive Department.

MR. HEFLIN (Chambers)—I want to ask the chairman of the Committee on Executive Department what has become of the Minority report?

MR. JONES (Montgomery)—The Minority report is on the ordinance offered by the gentleman from Chambers. The minority did not dissent as to this. They thought one was enough, I suppose.

MR. HEFLIN (Chambers)—Wasn't your report and some amendments made on the ordinance?

MR. JONES—No, sir; not on the ordinance offered by the gentleman from Dallas, or his resolution.

The report of the Committee on Ordinance No. 408 was read as follows:

Report of the Committee on Executive Department on Ordinance No. 408:

Mr. President, the Committee on Executive Department to whom was referred Ordinance No. 408, direct me to return the same with the recommendation that it do not pass. It proposes to change the present Constitution and the article on the Executive Department adopted by this Convention so as to make Sheriffs eligible as their own successors, and to change the provisions of the article adopted by the Convention to the mode of impeachments of Sheriffs.

All these matters have been so frequently discussed before the Convention, and it has so frequently acted adversely to the principle sought to be enacted by the ordinance herewith returned, that the committee refrains from any argument in support of its adverse report.

Thomas G. Jones, Chairman.

The Minority report of the committee was read as follows:

Minority report of Executive Department:

We, the undersigned members of the Committee on the Executive Department, do not concur in the Majority report on Ordinance No. 408, introduced by Mr. Heflin of Chambers.

We recommend the adoption of the ordinance as amended by us, which is as follows:

An ordinance entitled Section 28 of Article V:

Be it ordained by the people of Alabama, in Convention assembled:

A Sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of four years, unless sooner removed, and he shall be ineligible to such office as his own successor. Vacancies in the office of Sheriff

shall be filled by the Governor, as in other cases; and the person appointed, shall continue in office until the next general election in the county for Sheriff, as provided by law.

The Sheriff may be impeached or removed from office in the manner and for the causes mentioned in Article VII of this Constitution.

Be it further ordained that Section 28 of Article V., which was finally passed on July 2, 1901, be and the same is hereby repealed.

T. W. Hodges.

M. S. Carnichael,

M. M. Smith.

THE PRESIDENT—The ordinance will lie upon the table and be printed. Is it the pleasure of the Convention that the report of the Committee shall also be printed? The Chair has several times called attention to the fact that the rules provide only for printing the ordinances.

MR. WILLIAMS (Marengo)—I move that the report of the committee be printed, along with the ordinance, including the minority and majority reports both.

THE PRESIDENT—What is the pleasure of the Convention as to the resolution? To take the same course?

MR. JONES—Unless the gentleman from Dallas desires it, I do not see any need to print it at all, because it is the same old straw we have been threshing over for days. Does the gentleman from Dallas wish to have his resolution reported back printed?

MR. BURNS — I suppose it will be printed in the report. The stenographers take down everything, word for word, that is said, and it will be printed there.

The motion to print the reports, minority and majority, and ordinances was carried.

MR. JONES—There is one other matter that I forgot to report. The Committee requested me to return to the Convention the petition of the Sheriffs, Clerks and Registers. The committee had already acted upon so much of the petition as referred to the article on Executive Department, and they ask me to return it and that it be referred to the Committee on the Judiciary. It seems to relate to matters coming up before that committee.

The petition was received and referred to the Committee on Judiciary, as requested.

THE PRESIDENT—The next business before the Convention is the consideration of the report of the Committee on Taxation.

MR. WALKER—I believe when the Convention adjourned day before yesterday it had under consideration the amendment offered by the gentleman from Lauderdale, to section 10 of the committee's report.

THE PRESIDENT—And there is an amendment pending by the gentleman from Mobile, an amendment to the amendment of the gentleman from Lauderdale.

MR. WALKER—Two amendments being before the house, I understand another one is not now in order. Objection is made to the section as reported by the committee—

THE PRESIDENT—The Chair will call the attention of the gentleman to the fact that the gentleman from Lauderdale has the floor on that proposition.

MR. O'NEAL (Lauderdale)—I am willing to yield to the gentleman from Madison, provided I am recognized after the conclusion of his remarks.

THE PRESIDENT—The Chair does not entertain any proviso. It will take into consideration the application of the gentleman when made.

MR. WALKER—Objection was made to the provisions reported by the committee that the operation of the section would prevent the acquisition by municipal corporations of public utilities, in reference to which the indebtedness would not bear upon the revenues of the city, because of the possibility of arrangements being made by which those utilities could be made to bear the burden.

Objection on the other hand was made to the amendment offered by the gentleman from Lauderdale, on the ground it practically amounts to dispensing with all limitations upon the debt creating power of municipalities. It occurs to me in reference to each of these objections there is considerable force. We do not want in the first place, to tie the hands of municipalities so that they will be unable to acquire certain conveniences of municipal life, that may be acquired in such a way as not really to create additional burdens upon the revenues from taxation of the municipality. On the other hand I take it this convention must recognize the necessity of fixing some limitation upon the power of municipalities to create debts in any direction, and the limitations which have been suggested before the Convention by each of these ordinances have in view really the limiting of the capacity of municipalities to make debts, and I assume that it is not

the purpose of this Convention to leave it free to the municipalities to create debts beyond their capacity to pay, and the argument that this debt creating capacity should be left untrammelled because of the good things that might be acquired by the municipalities, is no reason for leaving it without limit. The limitation upon municipalities should stand very much upon the footing that the limitation upon individuals creating debts, and that the limitation should be the capacity of the individuals or of the municipalities to pay those debts. In order to meet, however, the objections that have been suggested to the plan of the Committee on the one hand, and to the plan of the amendment on the other hand, I have undertaken to frame an amendment to the ordinance as reported by the Committee, which I propose to offer when the opportunity presents itself, or when the parliamentary situation is such that an amendment can be offered, and I desire now to have the proposed amendment read as a part of my remarks.

The amendment was read as follows:

Sec. 10. No city, town or other municipal corporation shall become indebted in an amount exceeding 5 per centum of the taxable value of the property thereof; Provided, that for the construction or purchase of waterworks, gas or electric light plants, sanitary sewerage, or street or sidewalk improvements, an additional indebtedness not to exceed 3 per centum of such taxable value may be created so as to be a charge upon the revenues from taxation of such city, town or other municipal corporation, and that any debts or liabilities in excess of such 3 per centum limitation incurred by such city, town or other municipal corporation in the construction or purchase of water works, gas or electric light plants, sanitary sewers, or street or sidewalk improvements, may be made charges upon or against, respectively, such water works, gas or electric light plants, and upon the liens in favor of or the liabilities to such city, town or other municipal corporation, acquired in or by reason of the erection or construction of such sanitary sewers, or street or sidewalk improvements; Provided, further, That the limitations contained in this section shall not apply to any indebtedness in excess of such limitations already created or authorized by now existing law to be created.

MR. WALKER (Madison)—The Convention will observe if the purport of that amendment has been understood from the reading of it, that the effect of it is to leave the 5 per cent limitation made by the Committee as it stands, to leave the 3 per cent additional power of contracting debt stand to the extent of limiting that power of contracting debts to those which will be a charge upon the tax revenues of the municipalities, but to remove the limitation to the extent of allowing municipalities to pledge or make charges upon the properties or utilities that they acquire in making a debt above that limitation. For instance, in



the case of the acquisition of a water works by a municipality, it would be competent to create a debt in addition to the 5 per cent limitation, to the extent of a 3 per cent limitation, which would bear upon the revenues from taxation of the municipalities, but beyond that 3 per cent limitation, the debt for such water works would be chargeable, not upon the revenues from taxation of the municipality, but upon the water works plant, that they might acquire.

MR. ROGERS (Sumter)—That they could mortgage their plant?

MR. WALKER—Yes, so far as they have security to offer which is acceptable in commercial circles, that their powers shall not be restricted, but beyond the limits of such security, a prudent limitation upon its capacity to create debts shall be fixed by this Constitution, and I conceive that it cannot be argued by any one that some such limitation as this should not be put upon the municipalities of this State. Municipalities should not be left in a position to commit financial suicide at any time for the creation of any kind of utilities for the municipalities. They should have thrown around them the safeguard and the protection which prudent individuals should throw around themselves, and debts in the case of municipalities no more than in the case of individuals should be created beyond the possibility of satisfying those debts.

MR. WEAKLEY (Lauderdale)—Will the gentleman permit me to ask him a question?

THE PRESIDENT—Will the gentleman consent to an interruption?

MR. WALKER—Certainly.

MR. WEAKLEY—Suppose, for instance, the municipality has already incurred an 8 per cent. debt, what security has that municipality under that plan, to offer to the owner or owners of the water works plant for the payment of that, except the revenue from it?

MR. WALKER—If it be a good plant as stated in the case of Montgomery, the mortgage upon the plant would be a good security. It was argued that Montgomery had recently acquired a plant that was in such a situation that the mortgage given and the securities upon the plant were sufficient to float the bonds in the market and give security—as a matter of fact the revenues from the property were more than sufficient.

MR. WEAKLEY—Did I understand the bonds issued by the city of Montgomery for the purchase of water works were not general obligations of the city?

MR. WALKER — I did not say that, but in the argument

made here, it was argued by the gentleman from Montgomery that the water works plant itself was sufficient to more than reimburse the city for the liabilities incurred by it.

MR. WEAKLEY—The gentleman did not understand the question. I asked if the city of Montgomery had no other security than the plant itself, which they were to buy, could they have bought that plant upon the faith of the revenues of the plant alone, without the endorsement and credit of the city of Montgomery.

MR. WALKER—It seems to me they could if the statement made about the earning capacity of the plant is correct, but whether it could or not if it has exhausted its power of creating debts which can in any view or probability be paid, it ought not to go any further.

MR. OATES — I suggest to the gentleman from Madison that he was quite right, they knew that the income from it would be ample to more than pay it.

MR. WALKER—I say that this additional security given a municipality in arranging to borrow money upon such plants as these, the securities will be so arranged as to secure the proper maintenance and the proper revenue producing capacity of the plants that are pledged as security, and not only the public officers but the persons from whom they acquire money will be interested in seeing that the arrangements are so made that the plants will be kept upon a revenue paying basis.

MR. PILLANS—Wouldn't the effect of the adoption of the plans suggested in your paper be such that no street paving could be made by any city which has reached the 7 per cent., unless it was by putting the whole burden of the paving on the adjacent property owners. In other words, whether the city could then pay one-half of the general assessment of paving and assess the other half on the abutting property owner, whether in other words you would not deprive the city of any credit for any part of a debt for paving except that part which was to be borne by the abutting owner?

MR. WALKER—If the city had already gone beyond the limit of indebtedness where there was any probability of its being paid, that would be the situation, and I submit, gentlemen of the Convention, as I stated before, that inconveniences of that kind by municipalities are in the same situation as like inconveniences for individuals. There are a great many things individuals want and would like to get, but if their debt-contracting power and means are insufficient they ought to do without them, and that homely rule should apply to corporations as well as to individuals—they cannot eat their cake and keep it, and you cannot make for a public body, any more than for individuals, a rule that can get

around that homely expression. If they have already exhausted their debt-contracting power, they are not in a position to get the good things of the world that people can get who have good credit and are entitled to get credit.

MR. PILLANS—You mean that they have already exhausted this arbitrary limit of debt?

MR. WALKER—No sir, I do not think that is an arbitrary limit. I think there should be some reference, under the tax limitations which we have, and which we do not intend to abandon, to the capacity of municipalities to meet their indebtedness.

I desire in discussing this matter and expressing my opposition to the pending amendment to explain to the Convention that in event of its being voted down by the Convention that the substitute that I have had read in their presence will be offered.

MR. O'NEAL (Lauderdale)—Mr. President, I see no necessity for the passion and temper which has been displayed in this debate by those who oppose the substitute offered by the gentleman from Lauderdale. Distinguished gentlemen on this floor have denounced the substitute as an effort to repudiate debts, and to involve the cities and towns of Alabama in bankruptcy and ruin. Those of us who favor the substitute are characterized as the advocates of increased burdens upon the people. This charge is wholly unfounded and I am sure would only be made in the heat of debate. What is the proposition that we are considering? It is simply a plain business proposition. The report of the Committee on Taxation, in my judgment, if adopted by this Convention, would result in preventing any progress or improvement by the great industrial cities of this State. It says that no city or town shall go beyond a limitation of 5 per cent., and makes no exception for street improvement. No gentleman who has spoken has undertaken to answer the array of facts and figures offered by the gentleman from Lauderdale. The figures he has produced show beyond controversy that all of the principal towns and cities of this State have already a debt exceeding 6 to 7 per cent. Then if you adopt the section as reported by the Committee on Taxation, you say to the city of Florence, to the city of Birmingham, to the city of Decatur, and to all the great industrial cities of the State, that you have already reached your limit, and you shall no longer continue the system of street improvement now prevailing. What is the system that prevails in most of the cities and towns in this State? On account of the limitation which now exists in the Constitution, the revenues derived from taxes are not more than sufficient to meet the ordinary expenses of a city government. Our cities are confronted with the necessity to secure streets and sidewalks, to levy a tax upon abutting property. That tax is paid by the city, and a lien enforced for its collection. In the city of Florence and in the other cities of this State, after the

improvement is completed, the city issues to the contractor a bond payable in ten years. That bond is negotiated and the property owner can come up and pay it in ten annual payments with a low rate of interest. Under that system all of our great cities and towns have secured good streets and pavements. Now I am sure it is not the disposition of this Convention to prevent any further improvement of that character. What is the substitute offered by the gentleman from Lauderdale? The first provision is that no city or town shall become indebted in an amount exceeding 7 per cent. of the assessed valuation of the property. What is excepted from that? First, Section A, is indebtedness in anticipation of collection of taxes. What objection can be made to that? The burden of taxation is not thereby reduced. If the city has any revenue which it will receive at a particular time upon its taxes, what objection can there be in the case of an emergency to borrowing money in anticipation of the collection of such tax? Such emergencies occur in the life of every city in the State, and hence it would be manifestly unjust to call the temporary loan in anticipation of taxes a debt upon the people of the city. Now, the next Section B, is bonds issued for the purpose of purchasing water works or the construction of sanitary sewerage. Unless you adopt that provision, none of our great cities can purchase their water works, because they have already reached a 7 per cent. indebtedness—with possibly one or two exceptions. I mean all cities over 5,000 inhabitants. And what is the difference between the water works and debt? When you purchase a water works system you purchase a property that yields a revenue, you increase the taxable value of your property. Now, the next is C, obligations incurred and bonds issued to procure means to pay for street or sidewalk improvements or storm water sewers, the cost of which is to be assessed against the property abutting the same. That ought not to be considered a debt of the city, unless the city pays for the improvement, and here I am willing to accept something on the line suggested by Judge Walker. But where the improvement is wholly paid by the abutting property owner, it is not a debt of the city, it is merely a debt which the city guarantees, and for which guarantee it has sufficient collateral. If I guarantee a debt, endorsing a note with collateral worth ten times the amount of the loan, I am not creating any debt, and unless that provision is incorporated in the section as reported by the Committee on Taxation, as the gentleman from Jefferson has stated, it will result in checking forever the progress now made in all the great industrial cities of this State. I am sure that such is not the wish of this Convention. You would say to Birmingham, Florence, Decatur, Huntsville, Dothan, Tuscaloosa and Montgomery, which have now reached the limitation provided for that when you undertake to negotiate bonds for street improvements, the Constitution forbids it, and hence the progress now being made in the great industrial cities of this State must cease.

MR. MACDONALD—I would like to ask the gentleman a question.

THE PRESIDENT—Will the gentleman consent to the interruption?

MR. O'NEAL—Certainly.

MR. MACDONALD—Do you construe Subdivision C a bar to municipalities imposing the entire cost of street and sidewalk paving and the construction of sewers on abutting property owners?

MR. O'NEAL—I do not.

MR. MACDONALD—Your argument would seem to indicate to that.

MR. O'NEAL—I admit that local assessments of this character sometimes work great hardships. I concede that there are ways in which the Legislature can remedy this evil, but that is a matter for the Legislature. We know that in all cities of the Union all improvements have been made by this system of local assessments. Shall this Convention say to the people of Alabama that that system which has prevailed in all the great cities of the Union, that system which has prevailed in Alabama, shall no longer continue, but by the fundamental law we will forbid you from ever making any debt even though that debt may be paid by the abutting property?

MR. MACDONALD—May I ask another question? In that portion of this debt which is not covered by the assessment against the abutting land owner which is a general debt against the city, they would have no limit in the creation of that particular character of debt. I contend that if Subdivision C of the substitute does not give the municipalities the power to assess the entire cost of improvements against the abutting property owners, then the excess of cost of construction over and above what is assessed against the abutting property owner would be a debt against the municipality generally and might be without a limit?

MR. O'NEAL—I am in favor of limiting the power of a city to create a debt for streets or improvements of that kind where it comes out of the general revenue of the city, but where the improvements are taken from abutting property, there ought to be no limit. Of course we all agree that there should be some limit upon the debts of cities and municipalities in this State. We all agree that the unlimited power to tax is the power to destroy. The argument made on this floor against the dangers of unlimited taxation meets the views of every gentleman in this Convention. What have we done about this limitation on taxation. We say you shall not go beyond one-half of 1 per cent., and the re-

port of the Committee on Municipal Corporations, has a Section in reference to this subject, Section 5. Now the trouble is that under the present system, any member of the Legislature can, without consulting his constituents, come to Montgomery and impose a debt upon any community of this State. That is true—without consulting his constituents, without asking their views or wishes in the matter. Now the Committee on Municipal Corporations has a Section which will prevent this in the future. Sec. 7. "No county, city, town, village, district or other political subdivision of a county shall have authority or be authorized by the General Assembly after the ratification of this Constitution, to issue bonds, unless such issue of bonds shall have first been approved by a majority vote by ballot of the qualified voters of such county, city, town, village, district or other political subdivision of a county, voting upon such provision. In determining the result of any election held for this purpose, no vote shall be counted as an affirmative vote which does not show on its face that such vote was cast in approval of such issue of bonds. This Section shall not apply to the renewal, refunding or re-issuance of bonds lawfully issued, nor prevent the issuance of bonds in cases where the same have been authorized by laws enacted prior to the ratification of this Constitution, nor shall this Section apply to obligations incurred or bonds to be issued to procure means to pay for street and sidewalk improvements, or sanitary or storm water sewers, the cost of which is to be assessed against the property abutting said improvements or drained by such sanitary or storm water sewers."

THE PRESIDENT—The time of the gentleman has expired.

MR. WEAKLEY (Lauderdale) — I offered a substitute for Section 10 of the report of the Committee on Taxation, and an amendment was offered to the substitute, and I desire now with the consent of the gentleman offering the amendment to withdraw the substitute, and I offer to the Convention in lieu thereof, this substitute:

Sec. 10. No city, town or other municipal corporation, shall become indebted in an amount, including present indebtedness, exceeding 5 per centum of the assessed value of the property thereof, except for the construction or purchase of water works, gas, or electric lighting plants and sewerage or for the improvement of streets for which purpose an additional indebtedness, not exceeding 3 per centum may be created, and excepting also temporary loans to be paid within one year, made in anticipation of the collection of taxes, not to exceed one-fourth of the general revenues of such cities and towns; Provided, however, that this limitation shall not apply to towns and cities having a population of 6,000 or more, nor to the City of Gadsden, which last described cities and towns shall not become indebted in an amount, includ-

ing present indebtedness, exceeding 7 per centum of the assessed valuation of the property thereof, and provided further, that there shall not be included in the limitations of the indebtedness of such last described cities and towns the following classes of indebtedness, to-wit: Temporary loans to be paid within one year, made in anticipation of the collection of taxes, and not to exceed one-fourth of such taxes; bonds or other obligations already issued or which may hereafter be issued for the purpose of acquiring, providing or constructing school houses, water works and sewers; and obligations incurred and bonds issued for street or sidewalk improvement, where the cost of the same, in whole or in part, is to be assessed against the property abutting said improvement.

Nothing herein contained shall prevent the funding or re-funding of existing indebtedness.

MR. WEAKLEY—After the presentation of the report of the Committee on Taxation and the substitute recommended by the Committee on Municipal Corporations, there developed such a contrariety of opinion upon the subject of debt limitation, that the representatives of nearly all the municipalities of the State set to work to frame a section which would meet as far as possible the objections that have been offered upon this floor. The Convention will bear in mind the words of a distinguished statesman who said it was a condition and not a theory that presented itself. I will admit that if no city in the State of Alabama had a debt, that neither the proposition presented by the Chairman of the Committee on Taxation, nor the proposition presented by the distinguished gentleman from Madison County would have my support.

MR. COLEMAN (Greene)—Has the delegate from Mobile accepted that in lieu of the amendment offered by him?

MR. WEAKLEY—That is my understanding.

MR. PILLANS—I will accept it.

MR. COLEMAN—There is but one amendment offered to the report of the Committee on Taxation, and that is the one you have in your hand?

MR. WEAKLEY—That is my understanding the Convention consented to the withdrawal of my original substitute.

THE PRESIDENT—Does the gentleman from Mobile consent to the withdrawal and the introduction in lieu of it of the substitute of the gentleman from Lauderdale.

MR. PILLANS—Yes sir.

THE PRESIDENT—Leave has been granted to substitute the proposition offered by the gentleman from Lauderdale, and it is so ordered.

**MR. MACDONALD**—What is the parliamentary situation of the question now? The substitute offered by the gentleman from Lauderdale is now before the house—this last substitute. If it were proper I would like to offer an amendment at this time to that substitute.

**THE PRESIDENT**—The gentleman from Lauderdale has the floor.

**MR. WEAKLEY** — Upon an examination of the financial condition of the various cities of Alabama and municipalities, the fact develops that certain cities of this State have exceeded the limitations proposed to be imposed upon them by the Committee on Taxation. That certain other towns in the State have not incurred these debts, and desire the protection of that report. We now propose that the debt limitation fixed by the Committee on Taxation, with a slight modification, shall apply to all towns and cities in Alabama of less than 6,000 persons, and that the limitation with certain modifications proposed by the committee on Municipal Corporations shall apply to all the towns and cities in Alabama in excess of 600 people, except the city of Gadsden. This section which is now offered to the Convention has been arrived at after studying carefully the situation as pertains to every city in the State. This section puts a limitation upon the power of every municipality in the State of Alabama to contract debt in proportion to its ability to pay, and at the same time it does not put them into the hands of contractors and lobbyists, it does not take from them the power of constructing sewers and sidewalks and of acquiring a system of water works. The gentleman will understand that with the varying amount of debts, and the varying needs of the cities of Alabama, that it is impossible to fix one limit which will apply to all municipalities. The report of the Committee on Municipal Corporations, as now amended, excepts from the limitation three different characters of debt. The first is temporary loans issued in anticipation of the collection of taxes. These loans are generally unnecessary. You will bear in mind that very few cities collect their revenues until almost the expiration of a year, in fact, we are compelled to run the cities for ten months in the year before receiving the taxes, and there are always periods of depression and of dullness in the affairs of cities just like there are periods of depression and dullness in mercantile business. This provision enables the city to go to the bank and borrow not more than one-quarter of its revenue, the loan shall not extend longer than twelve months and must be paid when the taxes are collected. It enables the city to meet its obligations towards the police force, Fire department, etc., and at the same time preserve the credit of the city. The other exception is debts created for sewers and water works. I can conceive of no argument which ought to prevent or preclude that a city should be prevented from acquiring a sewerage system and system of water



works after it has acquired a population of 6,000 people. Now, gentlemen, the other exception is the section which permits the city to incur obligations for street improvements or sidewalk improvements, where the cost of such improvements is levied in whole or in part against the abutting property. We do not contend and 'tis not the purpose of the committee on this section to regulate how much or what part of that assessment should be paid by the property owners, but whatever part it may be we do not think that that ought to be included in the debt limit of cities. Now, gentlemen, just one word more. It does not occur to me that this Convention can afford to tie the hands of the municipalities of Alabama, for I say to you that the growth and prosperity of the State of Alabama is the growth and prosperity of the towns and cities of Alabama, and any restriction placed by this Convention upon these cities in the proper exercise of their functions of preserving the life, the health, the safety and the comfort of the people is a restriction upon the State itself. We have heard a great deal said about the debt of the city of Montgomery, the city of Mobile and the city of Birmingham. I want to say to you that the creation of these debts has increased taxable values in Alabama by millions of dollars, that \$2,000,000 of debt incurred by the City of Birmingham has added \$40,000,000 to the taxable values of the State of Alabama, and the addition of this tremendous amount of wealth by these towns and cities in Alabama has made it possible by a system of taxation to largely increase the public school system of the State. You do not want to stop that source of revenue.

THE PRESIDENT—The gentleman's time has expired.

MR. REESE—I yield my time to the gentleman.

MR. WEAKLEY—I desire to say one word in regard to the amendment which has been proposed by the gentleman from Walker. I say under the operation of that section in the Constitution that it would be absolutely impossible for any city in the State of Alabama which had reached 8 per cent. of debt limit to contract any further debt under the plan which he proposes. The proposition which the city of Montgomery, when it desired to purchase the water works system, would have been able to make to the bond buyers would be simply this, that if you will sell us your water works system, we will give you a mortgage on the plant. Who ever heard of any man with money to lend, lending it upon such security? Isn't it a fact gentlemen, that every man who lends money fixes a limitation upon the amount which he will lend upon a given piece of property, and is it not always the universal rule that no man will lend money exceeding 50 per cent. or 60 per cent. of the value of the property? Do you suppose that a different rule would prevail when you begin to deal with large figures. I say to you that it would have been absolutely impos-

sible for the city of Montgomery to have constructed or purchased its water works system, it would have been absolutely impossible for the city of Mobile to have constructed its water works system unless there had been given the city the power of endorsing the obligation issued for the acquirement of those properties.

MR. OATES—Permit me to ask a question. Which do you consider the most economic and best policy, to facilitate the capacity for effecting loans, or rather to repress it, than to keep cities within their income?

MR. WEAKLEY—I think the best policy is to put reasonable restrictions upon the power to create debt, but I consider it fatal to the growth or prosperity of any city, or to the growth or prosperity of any State that puts restrictions upon the power of cities to build its water works, to improve its streets or construct its sewerage systems. The great cities of the world could not have been built under such laws as that. This is no new proposition. The gentleman talks about the question of street assessments. There is only one State in the United States that prevents the construction of streets like that, and that is the State of South Carolina, and if the gentleman will go to South Carolina he will not find a modern, well built, well constructed street in the whole State.

MR. COLEMAN (Greene)—There are more factories there than anywhere else—great improvement in the establishment of manufacturies?

MR. WEAKLEY—I will state this in answer to the proposition of the gentleman from Greene, suggested the other day by the Chairman of the Committee on Taxation, that on account of this restrictive rate of taxation that more manufactures and more industries would be located in Alabama. I say, gentlemen, that it is a proposition well known by everybody that more cotton manufacturies have been located in North Carolina and South Carolina than any other State in the South. In neither of those States are there limitations upon the debt-creating power or the taxing power, and I say further that the town of Charlotte, N. C., almost similar in its conditions and surroundings to the city of Huntsville, has been able to float its bond bearing 3 per cent interest, and the city of Huntsville and Selma cannot float theirs at all. That is the condition today.

MR. OATES—Does my friend know how many cotton factories there are in Charlotte?

MR. WEAKLEY—My information is that in the neighborhood of thirty-eight or forty. I am not sure. I say, gentlemen, that it is absolutely impossible under the restrictions which are about to be thrown around the cities of Alabama for this State to prosper. The Committee on Municipal Corporations has report-

ed, and I favor, the proposition that no bonds shall be issued by any city of the State of Alabama, unless the proposition is first submitted to a vote of the people. We have restricted their power of creating debt. We have restricted their power of taxation, and certain distinguished gentlemen now want to restrict the power of cities in raising revenues by licenses. I say, gentlemen, it looks to me as if the Convention has set out with an avowed purpose of strangulating the towns and cities of Alabama, and, in the language of the distinguished gentleman from Greene, this is the most momentous question that has ever been brought before this Convention. If you make it impossible for the city of Birmingham to grow and prosper, if you tie the hands of the city of Montgomery, and Mobile, and Gadsden, and Anniston, and Huntsville, and Florence, and Tuscaloosa, you tie the hands of the most productive towns in the State of Alabama. You gentlemen that have talked upon this floor about reduction in State tax rate will soon come to the proposition that there will be an amendment to the Constitution to increase the debt limit of the State because, just as sure as the policy now advocated upon this floor prevails, the increase in the taxable properties of this State will be very slight. There is a proposition in the amendment which I offer, excluding from the debt limit bonds issued for school houses. In answer to any objection that may be raised against that, I say that, framed as the section is now, after giving it all the care and thought that representatives of the various municipalities could give it, there was still a very decided limitation upon the power of these larger cities to contract debts, and it would have been absolutely impossible for a single one of them to construct another school house. If this Convention is not going to do anything for what are called the bare-footed boys of Alabama, then I beseech you, gentlemen, let the cities do it. I live in a town that has a school population of 2,000, and out of that 2,000 there is an enrollment in the public school system of the city of Florence of 1,033 pupils, and in addition to that in the State schools and private schools in my town there are in attendance 500 additional. Right now, when the schools are in session, they are filled to overflowing, and the teachers are working there at a pitiful salary of \$35 per month, teaching one-half of the class from 9 o'clock to 11 o'clock and the other half from 11 until 2 o'clock, and even thus dividing up the work, the pupils are sitting in the windows, two on a seat, and others denied admission for want of room. Gentlemen, we want the permission of this Convention to build another school house, and we want to tax ourselves to do it.

MR. WALKER—I desire to offer a substitute for the section reported by the committee and for the amendment of the gentleman from Lauderdale.

The substitute was read as follows:

Section 10. No city, town or other municipal corporation shall become indebted in any amount exceeding 5 per centum of the taxable value of the property thereof; provided, that for the construction or purchase of water works, gas or electric light plants, sanitary sewerage, or street or sidewalk improvements, an additional indebtedness not to exceed 3 per centum of such taxable value may be created so as to be a charge upon the revenues from taxation of such city, town or other municipal corporation, and that any debts or liabilities in excess of such 3 per cent limitation incurred by such city, town or other municipal corporation in the construction or purchase of water works, gas or electric light plants, sanitary sewers or street or sidewalk improvements, may be made charges upon or against, respectively, such water works, gas or electric light plants, and upon the liens in favor of or the liabilities to said city, town or other municipal corporation, acquired in or by reason of the erection or construction of such sanitary sewers, or street or sidewalk improvements; provided, further, that the limitations contained in this section shall not apply to any indebtedness in excess of such limitations already created or authorized by now existing law to be created.

MR. WALKER—I desire to offer a substitute for the Section reported by the Committee and for the amendment of the gentleman from Lauderdale.

The substitute was read as follows:

MR. WALKER—This discussion has developed the fact that it is recognized that the Convention has made up its mind to put some kind of limitation upon the debt creating power of municipalities. That is recognized in the substitute that was offered a few moments ago by the gentleman from Lauderdale; but that substitute would really defeat that manifest purpose of this Convention because it established, in the first place, a limitation, and then selects the class of objects for which it is recognized the municipalities of Alabama are disposed to go into debt, and excepts from the operation of the limitation each one of those objects. So that in reference to the erection of gas and water works and electric light plants and sewerage systems and sidewalks and street improvements, the result will be that this Convention has made no limitation at all but that in reference to those matters, which are the only ones as to which there is any disposition on the part of the municipalities of the State to create debts and put themselves in the position of being unable to pay those debts, or still leave them without any limitation at all.

Now I submit to the gentlemen of the Convention if we propose to put a limitation upon the debt creating faculties of municipalities, we should put a real limitation and not a limitation which amounts to nothing, and if we are to accept from the constitutional provisions all these matters which alone are those mat-

ters in which municipalities are interested in tangling themselves up in, we really put no limitation at all and we had better leave the matter without remark in the Constitution and let the Constitution remain just as it is.

MR. LOWE (Jefferson)—Will the gentleman permit me a question?

MR. WALKER—Yes.

MR. LOWE — What effect will this amendment have upon the salable quality of the bonds to be issued where the city is prohibited from becoming security on those bonds? In other words, if a debtor offers a piece of property as security and declines himself to be liable over the value of the property, would not that minimize the market value of the property and thereby require a higher rate of interest?

MR. WALKER—Yes, sir; it would operate on municipalities just like on individuals. If an individual has exhausted his competency to pay debts except with the particular security offered, the security would be the only thing looked to.

MR. LOWE—And would not that require a larger rate of interest?

MR. WALKER — No; if they had already exhausted their credit, my contention is they should not be allowed to go farther.

MR. LOWE—If they have exhausted their credit, how can they go farther? It requires two persons to create a debt, a debtor and creditor.

MR. WALKER—Yes, but the State of Alabama has in its power the right to determine the limits beyond which a municipality cannot create indebtedness and to have regard to the capacity of that municipality to pay the debt, whether or not they would be able in a particular circumstance to float bonds or not. They should look to the question of the tax limit being such that there will be the capacity in the municipalities to pay the debts they contract.

MR. LOWE—Is it not true that the debt limit which you seek to fix is for the protection of the creditor and not of the debtor?

MR. WALKER—Yes, and for the good name of the municipality.

MR. LOWE—But it is for the protection of the moneyed interests—the creditors.

MR. WALKER—No, sir, it is for the protection of both. It is for the protection of the municipality and for the protection of

the good name and the credit of the people of Alabama.

MR. PILLANS—Are we to understand that the gentleman apprehends the amendment offered by the gentleman from Lauderdale is putting lighting plants in this class of objects for which there is no limitation?

MR. WALKER—That was my impression.

MR. PILLANS—I want to call the gentleman's attention to the fact that lighting plants are expressly cut off. It is only sewers, water works and street improvements.

MR. WALKER — Now, the gentleman from Lauderdale speaks of strangulating the municipalities of Alabama. Alabama has had some experience in strangled municipalities and counties and how have they been strangulated? By the possession of an unlimited power to create debts. Have you ever heard of a municipality, county, city, town or village, being strangulated by not being permitted to go into debt? I have not. Look at the history of Alabama and you see strangulated communities but you will see that you have tied the rope around their necks with an unlimited power to create debts. That is the way to strangle the communities and municipalities of the State, to allow the present to mortgage the future beyond the capacity to pay. I submit this is an important question and that this Convention should lift its hand and prevent the possibility of that which has been done in the past being done in the future.

MR. MACDONALD—I do not know whether the proposition I propose to make is in order at present. As I understand there is the Section as reported by the Committee and a substitute offered by the gentleman from Lauderdale to the report of the Committee and an amendment to that offered by the gentleman from Madison. Is that the situation of affairs?

THE PRESIDENT PRO TEM (Mr. Cunningham) — The parliamentary status is this: The original substitute of the gentleman from Lauderdale by unanimous consent of the Convention has been withdrawn and in lieu thereof he offered a substitute, which has been read. To that substitute there was an amendment offered by the gentleman from Madison, which is the pending question.

MR. WALKER—Mine was offered as a substitute for the Section as reported by the Committee and all amendments.

THE PRESIDENT PRO TEM—And further amendment is not in order.

MR. MACDONALD—Briefly I propose to address myself to and hereafter to offer another amendment to the substitute offered by the gentleman from Lauderdale.

The special objection I had to the original substitute and which has not been obviated or to the slightest degree changed by this new substitute is the tacit—I might say direct—permission to municipalities to place upon property abutting upon streets upon which sidewalks have been made or sewers constructed, the entire cost of these alleged improvements.

On Wednesday my friend from Montgomery (Mr. Graham), in a rather heated speech, called the attention of the Convention to what he was pleased to term my unavailing attempts to fight such assessments in the courts of this State, and in the course of his remarks he fell into an error, unintentionally, I suppose, in stating that the Supreme Court of this State and of other States in which this matter had come up, had lately decided the question adversely to the contention I had made. Now this is not the fact. The cases that he alluded to began in the City Court of Montgomery on the equity side of the court. The judge of that court, in a decree rendered in the Birdsong case, which was the first case brought in that court, decided in my favor. That judge, than whom no wiser, abler or more learned judge sits upon the bench in Alabama or in the United States, for that matter, decided every proposition in favor of the taxpayer. He decided that such assessments for sidewalk purposes, the entire cost of which was assessed against abutting property owners, were invalid. He furthermore decided that all assessments predicated on an arbitrary basis of front footage of property were null and void under the charter of Montgomery and under the general law of the land. An appeal was taken by Montgomery to the Supreme Court, and that court held that the court below erred only in one respect, and that where it held that the charter of Montgomery did not predicate those assessments on any benefit derived therefrom. The Supreme Court said the charter was susceptible of that construction, and, therefore, the assessment was valid. The upper court held as has always been held by every intelligent court in the land, that the only just basis of such assessment was the benefit the property derived therefrom, and whenever these assessments exceeded the benefit the property derived, it became confiscation and not taxation, and it cited with approval Dillon on Corporations and a number of decisions to like effect in the State of Alabama. That case came back to the City Court in Equity, and another suit of a like character was tried before that same able judge, and the point was raised that the ordinance of Montgomery making the assessment predicated it solely on the front footage and without reference to benefits derived, and that same able judge repeated his decree and held that the assessment was void, and that question is now up before the Supreme Court of Alabama, not on appeal by the taxpayers, as the gentleman would have you believe, but on an appeal taken by the municipality of Montgomery.

The gentleman said further that I had been to the Supreme Court of the United States on the matter. I have never been to the Supreme Court of the United States on this proposition, but will certainly go there if the decision of the Supreme Court of Alabama is adverse to the uniform rule, based on justice and common sense, that wherever an assessment exceeds the special benefit the property derives from the improvement, it is void.

It was my purpose, and I propose later to introduce an amendment to this substitute, which, if adopted, will provide that no city or other municipality shall make any assessment upon property abutting on streets so improved in excess of the actual increase in value of that property by reason of such assessment, and that is the only just and honest rule for the imposition of such assessment.

My friends here, and especially my friend from Jefferson (Mr. Lowe), entertained this Convention day before yesterday with a remarkable history from the paradoxical condition of affairs in the city of Birmingham. Birmingham has always been more or less of a paradox in many respects. We have heard in olden times of martyrs in will and not in deed, and of martyrs in deed and not in will. We also know it is a common axiom that there are two certain things, death and taxation, and we also know that mortals are prone to avoid both of these. And yet, in Birmingham, we are told by the learned gentleman from Jefferson (Mr. Lowe), that people are so clamoring for the opportunity of paying taxes for sewers and streets, that they absolutely break down the cordon of police they have put around the City Council so that they may have the opportunity to impose taxes. That may be true as to Birmingham, but that is not so in other municipalities. The tax-gatherer in Montgomery is not earnestly sought after, nor is the City Council clamorously importuned to impose taxes.

Gentlemen speak of strangulating municipalities, stopping them in their march of prosperity and progress. They seem to forget that there are other objects of strangulation that these municipalities are engaged in strangulating and bankrupting taxpayers.

We have a remarkable picture of that in this city. We have contracted a debt in this city since 1875 of over \$1,750,000—

MR. SANFORD—\$1,900,000.

MR. JONES (Montgomery)—\$1,879,000, not including the baby bonds, from the official reports.

MR. LOMAX—What about the L. and N. Railroad and the market bond tax?



MR. MACDONALD (Montgomery) — And thereby hangs the tale. This city issued bonds to aid in the construction of the South and North Alabama Railroad, and, as I am reliably informed, has been collecting for fifteen or twenty years \$10,000 a year more than enough to pay the interest on those bonds, and has not paid one of those bonds and has never used the excess for the purpose of creating a sinking fund for the payment of those bonds, but has absolutely been using it in violation of constitution and law for their own purposes.

Mr. President, I received this morning a communication from a gentleman in this city who is perfectly familiar with the facts he states, and I would like to have it read by the clerk as a part of my remarks, and read with that power of voice and excellence of enunciation for which he is known.

The communication was read by the clerk as follows:

Montgomery, Ala., July 4, 1901.

Hon. Gordon Macdonald, City, Dear Sir:

I notice that in considering the question of a debt limit of cities, the status of local assessments for street and sidewalks was the subject of discussion at the evening session of the Convention. Under the amendment offered by Mr. Weakley the obligations or bonds issued for raising "means to pay for street and sidewalk improvements, or storm water sewers," the cost of which is to be assessed against adjoining property, is not to be included in computing the debt of a city.

It seems to be a curious fact that most of the gentlemen who spoke for the amendment have at one time or another been Mayors, City Attorneys or Aldermen of some city and it may be that Col. Sanford was not altogether wrong in saying "that you could not find an ex-Alderman or an ex-Mayor or an ex-City Attorney who is not in favor of all these exactions in favor of municipalities. The Convention certainly furnished no examples. Members who seek to limit the right to contract debts by the city for the citizens to pay are said by Mr. Graham to be "having their hands upon the throat of the municipalities of this State and attempting to choke the very life out of them," though he admits further on that the city of Montgomery under the beneficent administrations of the local authorities is in debt two and a half millions and "unless relieved by legislation in this Constitution will go to the wall."

THE PRESIDENT—The gentleman's time has expired.

MR. LOMAX—I move that the gentleman's time be extended to permit him to finish his remarks.

MR. OATES—I will yield my time to the gentleman.

**THE PRESIDENT PRO TEM.**—The Chair had not recognized the gentleman from Montgomery and he has no time to yield.

**MR. OATES**—If it is admissible I thought it would be a saving of time rather than having a vote to extend the time.

**THE PRESIDENT PRO TEM.**—The Chair will hold that the gentleman from Montgomery not having been recognized has no time to yield.

A vote being taken the motion to extend the time was carried and the reading was continued as follows:

I respectfully suggest that the local authorities who are responsible for this condition should not be allowed to continue in the debt contract business. I notice also that none of the gentlemen have any provision for preventing all the cost of these so-called improvements from being assessed against the property of the citizen. Mr. Watts blandly remarks that this section does not make any assessments against property, but any man who reads the section will know that there is enough sanction in the section for that practice to have every city official claim full power to do so, under it.

It is well to consider the history of these municipal authorities, since 1875 and note their attitude toward the Constitution of the State. Our city had a debt of almost \$750,000 at the adoption of that Constitution and it has created about \$1,750,000 since. By that instrument the city was allowed 50 cents on the \$100 for general expenses and allowed in addition to levy sufficient to pay the debt it owed when it was adopted. For the last twenty years the beneficent municipal authorities have levied 62 1-2 cents ostensibly to pay the interest on the debt existing in 1875, when it was not needed for that purpose, and in defiance of Constitution and law have used it at their own sweet will. For the last fifteen years there has been collected in excess of what was paid on interest on the debt at least \$10,000 a year and the fact remains that the debt has not been reduced a single cent. It is justified or condoned on the plea of necessity. This course was pursued when Mr. Watts was an Alderman and was so plainly and palpably in violation of law that Mr. Watts protested and voted against the levy while a member of the Council. Can it be said that a necessity created by the municipal authorities is a valid excuse for a plain violation of the Constitution and that a municipal corporation which persists for twenty years in such violation is a safe custodian of power to contract debt for its citizens to pay. This has been the course of the City Council on the subject of taxation, and its course on the paving question is marked by the same assumption of power to do as it pleased with the property of the citizens. I will state its action on the paving of Madison Avenue, An Al-

derman lived at the head of the street and at his request an ordinance was passed to pave the street under the baby bond act and assess the entire cost against the abutting property.

MR. REESE—I rise to inquire what part of that is pertinent to the pending question?

MR. MACDONALD—It is all pertinent. It shows the effect of unlimited power on the part of a municipality.

The reading was continued.

It was protested under the terms of that act, and on the very night the protest was presented to the Council, that body in defiance of the protest, again passed an ordinance to pave the street under the provisions of the same act. A second protest defeated this ordinance, but the Council still knew better than the people who lived on that street that it ought to be paved and having, as they thought, found out that the elimination of two blocks would enable them to pave the balance of the street under the baby bond act, they ordered the pavement of these two blocks under the general paving law under which the citizen has no voice, though the property is assessed one-half the cost of the street and he must pay his part in a single payment. Having paved these two blocks in this manner, the Council again gave the inhabitants a chance to see the error of their way and passed the baby bond ordinance for the balance of the street, but the people again protested, and again the Council resorted to its power under the general paving act and forced the paving of three more squares. The stubborn fact remains that not a block has been laid on this street from Perry Street east which was not laid against the protest of the property owners on it.

It is likewise true that in order to pave Lawrence Street under this baby bond act the frontage of churches, and of the Government Building and the County Court House were counted, to escape the force of a protest of a majority of the people who paid taxes on that street.

This then is the spirit that the municipal authorities have administered the powers they now have in regard to assessments for street improvements and no stronger case could be made to show the absolute necessity of curbing that power. I earnestly urge that you insist on some limitation being put upon the amount of such assessments. On this Madison Street property the assessments for the so-called improvement amount to about 15 per cent. of the value of the property, and with the 16 per cent. bonded debt of the city constitute a charge of above 30 per cent. of its value.

MR. PILLANS—I protest that this is not a part of the remarks of the gentleman.

MR. MACDONALD—I have offered this as part of my remarks and the clerk is reading it as such.

MR. PILLANS — This seems to me to be in the nature of dealing with the local a parochial quarrels of Montgomery with which we have no concern here. I make that point of order.

THE PRESIDENT PRO TEM—The point of order is overruled.

The reading was continued.

I simply call your attention to these facts, and the further fact that this property has paid taxes to the city of Montgomery of \$1.12 1-2 on the \$100 for twenty years, and, by the beneficent rule of the municipal authorities, is now subject to charges which aggregate a third of its value.

I think the citizen has some right to say when such improvements shall be made and that it is time that the hands of these municipal authorities be taken from the throat of those who happen to own property in the city of Montgomery, before the very life is choked out of them.

Yours truly,

Edwin F. Jones.

Now I can add but little to what Mr. Jones has said.

My friend from Montgomery (Mr. Graham) on day before yesterday made some allusion to a decision of the Supreme Court on this paving question wherein he stated what was a fact that the latest announcement by that court was that the entire cost of such improvements might be assessed against abutting property owners if the Legislature so provided and the Constitution of our State did not prevent. That decision was absolutely contrary to the decision in *Norwood vs. Baker*, although the ingenuity of the court was strained to show that they were not in conflict. But conceding that to be the law, it shows the further wisdom of incorporating in the organic law of the State such limitations so that the Legislature cannot grant to a municipality the power of putting unlimited burdens on taxpayers. The Supreme Court of the United States has on more than one occasion indulged in similar assaults more or less seemly and the last deviation referred to by the gentleman of Montgomery is on a par with the income tax decision and the Porto Rican absurdity and I think a majority of this Convention will agree with me in insisting that a limit should be put on the powers of municipalities to assess their citizens for improvements which are for the benefit of the whole public.

MR. WEATHERLY—Mr. President and gentlemen of the

Convention, I know it is not the desire of this Convention to work any wrong or injustice upon any of the cities of the State.

I believe that the committee in making its report and that the gentleman from Madison in offering his substitute are acting with the sincere desire and purpose of doing what they think would be for the best welfare of all the cities of the State, and yet, I think it is manifest at the outset that the general regulations which they propose may work great injustice to at least shall apply to all the cities of the State. They propose an arbitrary rule which shall apply to all the cities of the State without reference to population, without reference to the peculiarities of any city, without reference to the desires of its citizens, and really in opposition to the modern rule with regard to the regulation of cities, which admit that cities should be classified for the express purpose of applying rules to the government of such cities, based upon the peculiarities which mark one class of cities from another. It is generally unsafe in the matter of the government of cities to lay down one rule for them all which shall disregard the characteristics of any. Now, I am sure that the committee in making this report could not have considered, for instance, the peculiar situation and demands of the city of Birmingham. Indeed, I do not know that the members of the committee consulted a single representative from the county of Jefferson and therefore a representative of the city of Birmingham.

MR. BROWNE—I will just rise for the purpose of informing the gentleman that one of the representatives from Jefferson county was a member of that committee.

MR. WEATHERLY—Then I take it for granted he was not consulted, though I do not know who the member was—Yes, I do know. I beg pardon of the Chair (Mr. Cunningham), but I can state to the Convention now that the delegate from the county of Jefferson is unanimously opposed to the report of the committee as it now stands.

MR. JONES (Montgomery)—Does that include the committeeman?

MR. WEATHERLY—Including the committeeman.

Now will this Convention hasten on to the adoption of a report not specifically devised to suit the conveniences or the welfare of the city of Birmingham and in opposition to the wishes of her citizens merely to satisfy some general theory of construction whereby the committee thinks it has dealt satisfactorily with the debt proposition. The mere fact, as I think I can show, that the report of the committee is totally out of harmony with the demand and requirements of Birmingham will show to the members of this Convention that this report should not be adopted as it is. I

am sure there is no cautious, conservative member of this Convention who would here in the course of this morning hour adopt an ordinance which is to last for a quarter of a century, the effect of which will be, in our opinion, to blast the prospects of one of the chief cities of the State.

MR. PILLANS—You may add Mobile to your remarks. The situation would be the same there or worse.

MR. WEATHERLY—And by consent Mobile is added.

MR. COLEMAN (Greene)—Why not except your cities.

MR. WEATHERLY—There might be too many of them.

MR. COLEMAN (Greene)—Perhaps if you try you will find that the Convention is willing to except your city.

MR. WEATHERLY—I believe if there were only one or two, we might do it, but the Convention will concede that it looks like a crude performance to put at the end of an ordinance like this a lot of exceptions.

The delegate from Lee (Mr. Harrison) and the gentleman from Montgomery (Mr. Macdonald) each desired to interrupt the speaker.

THE PRESIDENT PRO TEM.—Does the gentleman yield for an interruption?

MR. WEATHERLY—Certainly.

THE PRESIDENT PRO TEM.—The gentleman from Montgomery may put his question.

MR. WEATHERLY—I had recognized the gentleman from Lee.

THE PRESIDENT PRO TEM.—But the Chair had recognized the gentleman from Montgomery.

MR. MACDONALD—Is not Birmingham now an exceptional case, have there not been amendments adopted for her case alone?

MR. WEATHERLY—Yes; I am willing to admit that Birmingham is an exceptional case.

THE PRESIDENT PRO TEM.—The gentleman from Lee is recognized to ask his question.

MR. HARRISON—The gentleman from Montgomery asked the question that I desired to put.

MR. LOWE (Jefferson) — I suppose both the gentleman from Montgomery and the gentleman from Lee know that the tax

rate in Montgomery under the Constitution is higher than the tax rate in Birmingham?

MR. MACDONALD—To our sorrow, we know it.

MR. WEATHERLY—Now this ordinance, as reported, and the substitute of the gentleman from Madison fixing the limit at 5 per cent on taxable values for ordinary purposes, allows 3 per cent additional for certain other purposes. Birmingham at present has gone up to 14 per cent. Our debt is \$2,124,000. Our taxable values are something in excess of \$15,000,000. She has gone beyond the limit. As I construe this ordinance and the proposed substitute, she will be deprived of the 3 per cent additional. She has already, by ordinance, proposed the construction of \$586,000 of street improvements, most of which will be assessed against the property owners, but for which her bonds will be outstanding, guaranteed by a lien upon the property. I do not know that I state the figures accurately, but \$270,000 and odd have been contracted for, leaving \$280,000 and odd which have been authorized by ordinance but not contracted for.

The time of the gentleman here expired, and, on motion, was extended.

MR. WEATHERLY—As I was saying, Birmingham has just started upon a career of street improvement. She has started upon a system of general improvement. She is a city in a beautiful valley called Jones valley, and anyone who stands upon the top of Red Mountain and looks down upon her as she nestles in that beautiful valley, and sees her stretching her limits up and down the valley, almost growing while you look at her, would be an unworthy citizen of Alabama if his heart did not swell with pride and enthusiasm at the sight, and if he would wish to do one thing that would check the onward movement of her citizens. Around and about her now are growing smaller towns which might be called her satellites—Woodlawn, Avondale, East Birmingham and a number of others I might mention, all of which will sooner or later be incorporated into this great town. We hope in the future, under this Constitution, to have more than a hundred thousand population; indeed, her population will be only limited by the confines of that valley and the absence of a water course through the valley. These little towns will be taken in, necessitating further street extensions and improvements of sewers and other sanitary improvement. We propose that all of these shall be paid for in the manner in which the improvements have already been made, as authorized by a recent act of the Legislature by assessment against the property owner. Our citizens do not object. I am proud to say to the gentleman from Montgomery that the citizens of Birmingham do not fear either death or taxation when they know it is not all of life to live, and when

they know by the payment of taxes, under a faithful administration, they will get full benefits therefrom.

( Now, as I say, gentlemen of the Convention, we have authorized \$586,000 of street improvements for the immediate future, \$79,000 of which have been built and about one-half of the remainder already contracted for. The report of the committee and the substitute of the gentleman from Madison will stop that immediately. We have gone beyond our limit. Our hands are tied, and we can do nothing else.

Not only that, but you must remember that this is not merely an act of the Legislature, but you are putting it in your organic law. Now, it has been suggested to me that there are 203 municipal corporations in Alabama. The report of the committee and the substitute of the gentleman from Madison will bear equally upon all of these corporations without exception and without regard to the peculiar needs of any of them and without regard to the wishes and desires of their citizens. The limitation in the first part of the amendment proposed by the gentleman from Lauderdale, which is practically as reported by the committee, will control 194 of these corporations, and to that extent that substitute will adopt the general system reported by the committee; but the virtue and efficacy and equity and reason of the substitute of the gentleman from Lauderdale lies in the fact that it contains some exceptions which apply only to the eight chief cities of Alabama. They apply to Mobile, Birmingham, Montgomery, Huntsville, Florence, Bessemer and Gadsden—those are nine, I believe. The virtue of the proposed substitute of the gentleman from Lauderdale is that it does not lay down a blind rule against the chief cities of Alabama, because most of the smaller towns demand that rule, but it concedes the rule established by the committee to the small towns and excepts from it the cities which do not require the application of that rule but demand something better.

Now, I will conclude my remarks by appealing to you not to apply this hard and fast rule to these growing cities, these progressive cities, these cities that are constantly expanding, and whose needs are constantly increasing. Don't apply this hard and fast rule to those cities without further deliberation, and don't apply it at the close of a debate which, perhaps, has not afforded opportunity to instruct the members as to the real needs of these cities. I know no member of this Convention would feel that he ought to apply a rule, for instance to Birmingham, which her representatives tell you with unanimous voice will hurt and injure and cripple her in the modern race for success.

Rather than have such action, we would ask that this matter be recommitted. We would rather have the substitute of the gentleman from Lauderdale, but if that cannot be done, we ask that



Birmingham be excepted, and if that cannot be done, we ask that this matter be re-referred to the committee and some broad, liberal, considerate and able scheme be devised and laid down that will not work inequality and injustice to some of your most important cities, and which will really and indeed be so well founded in reason, that you may afford to put it in your organic law.

MR. JONES (Montgomery)—Mr. President, if the city which I have the honor in part to represent, were not vitally interested in this question, I would not trespass upon the time of the Convention.

It seems we have mixed in the discussion of this question two propositions. One is whether the rate for local benefits ought to be curtailed and the powers of municipal bodies as to that, limited. As to this last proposition, I am in hearty accord with the gentleman from Montgomery (Mr. Macdonald) upon my right. But it seems in order to force favorable action on that proposition; some of our friends, to my apprehension, have unwisely combatted the right of a city to go in debt for other purposes, and seek to confine them to narrow and unsafe limitations.

What is the condition of Montgomery? I am satisfied nobody here wants to "throttle" anybody if they know it. It is because I believe some of the delegates do not know that they will choke Montgomery if they adopt the substitute of the gentleman from Madison, that I call their attention to these figures.

The city of Montgomery has an assessed value of real and personal property of \$12,555,000. It has a total debt of \$1,879,000 in round numbers, not including therein, approximately \$100,000 of what are called "baby bonds." Of that indebtedness \$600,000 is for water works, and that debt will take care of itself. The other indebtedness is \$1,279,050 or about 10 per cent of the assessed value of all of the taxable property in the city.

If the substitute offered by the gentleman from Madison is adopted, what becomes of Montgomery? I have great reluctance to differ from the gentleman from Madison, for I have often avowed my admiration for his common sense and honesty of purpose. I think, however, in that substitute, he has, unintentionally, struck a blow at cities in the condition of Montgomery.

Now let us take an account and see where we are, what has this debt been contracted for, outside of the water works debt? Five hundred thousand dollars was to build a railroad years ago, the completion of which prevented the town from drying up and getting in the condition of the town of Cahaba. Whatever may be said about that debt and the taxation for it, it was a beneficial investment, I will further say that it was voted by the people, sometime before the city actually incurred the debt. I believe the

Supreme Court declared the act, under which the election was held, to be unconstitutional. The balance of the debt is for sanitary sewers, street paving, storm sewers and school bonds, in round numbers about \$600,000. It is to this expenditure and our magnificent sewers that the city is indebted to its practical escape three years ago from yellow fever, which was confined practically to one part of the city, and which outside of the alarm and the death of a few good men, did no real damage to the city. We have a death rate, I believe, as low as any city on the continent. This is due to our expenditure for water and sewerage. We have a growing city. We need to extend our system of sanitary sewers and under this limit we cannot do it. Our people are proud of our school houses. They are a good investment, and if we want to put up more we can't do it. I ask the Convention if it is wise, if it is right, if it is just, especially in view of the fact that we may take it for granted that hereafter all debts will be required to be approved by a majority vote of the tax payers, to put the city of Montgomery in a condition where she must stand still, and can not extend its sewerage when needed, and may, perhaps, be compelled to go backwards.

MR. SANFORD—When you pay your debts you can go forward.

MR. JONES (Montgomery)—Sometimes a man is not able to pay debts, although he can pay interest, and sometimes if he is honest and wants money and needs bread and meat, and has a family which will starve without it, it is wise to leave it to the people he deals with to determine whether to credit him. He ought not to be cut off from the use of his creditors.

MR. WALKER—May I interrupt the gentleman?

MR. JONES (Montgomery) — Will that come out of my time?

THE PRESIDENT PRO TEM—Yes.

MR. JONES—Then, I hope he will make it short.

MR. WALKER—The suggestion in behalf of Montgomery, Birmingham and perhaps some other cities in the State goes to show that they are not in position to stand this kind of a limitation, because of what they have done in the past. Would not that objection be obviated by adopting the scriptural example and excepting the prodigal sons from this limitation?

MR. JONES (Montgomery)—Unquestionably it would, but we cannot tell whether this Convention will accept that mode of relief. We have had these propositions up for several days, and we do not know what the Convention will do. So we must fight for an acceptable proposition at all points.

Now, I wish to state another fact about the city of Montgomery which illustrates the unwisdom of cast iron constitutional provisions in regard to municipalities. We are restricted to one half of one per cent for current expenses. It is the universal experience of every one connected with the city government that they cannot do it. Although I fall in that class to which allusion was made by my distinguished friend from Montgomery and no man loves him better, an ex-alderman, I desire to give my experience and to say that during ten years in the City Council with such men as George W. Stone, Jno. W. Durr, we found the city could not live on the fifty cents. What is the result? It drives these corporations to do many of the things of which such just complaint is made. They are bound to have revenue and they reach out everywhere for it, and compel individuals to bear burdens, which should be borne by the city. I appeal to my friend, who wants to cut down the unbridled power of local assessments, not to cut down the debt limitation to such an extent that the municipalities will be forced to do what they have been doing, go out in the highways and under the claim of police power take up a bootblack and make him pay \$10 of license, take a contractor working two or three hands and make him pay a heavy license, and put unwarranted burdens on even the smallest kinds of business. It is most unjust to pay in this way things that should be paid by general taxation.

The time of the gentleman here expired and on motion of the delegate from Walker (Mr. Long) was extended.

MR. JONES—I am obliged for the courtesy of the Convention and will detain the Convention but a few moments longer.

I was about to call attention to the patriotic attitude of the people of Montgomery to this illegal taxation of about \$20,000 a year, which has been collected for years to keep our heads above water, to preserve our health. Although it is a matter of common knowledge that the tax is illegal, and at any moment could be stricken down by an injunction, there has never been in the history of the city but once, when any citizen raised that point, and what was at a time when our people did not control Montgomery. Ever since 1875 the people have gone on submitting to what was a notoriously illegal burden, because they were willing to make sacrifices for the growth and honor of their city, and to promote the welfare and prosperity of the Capital of Alabama.

Now that is our condition, and we appeal to the delegates who represent the sovereign power of Alabama not to put the people of its Capital in a position which they will hereafter regret.

MR. WEAKLEY—In order to meet the wishes of a number of gentlemen on this floor, I ask unanimous consent of the

Convention to amend the substitute offered by me by adding certain words which the clerk will read.

The amendment was read as follows: Amend by adding after the word "improvement," "provided, that the proceeds of all obligations issued as herein provided in excess of said seven per centum shall not be used for any purpose other than that for which said obligations were issued."

There was no objection and the amendment was made.

MR. BROWNE—I have no particular objection that this Convention should place no limit whatever upon the capacity of debt of municipalities, but if it does undertake to put a debt limit, it should be a reasonable one. The substitute of the delegate from Lauderdale is 10,000 times worse than no debt limit, because it invites extravagant expenditures of money. If a man owns a plantation and has an honest overseer upon it and goes away allowing him to expend money as needed, he will probably, being an honest man, only expend a reasonable amount, but if, when he leaves he tells him "I limit you to \$100 to buy feed for the mules, but for all other purposes spend as much as you please," no matter how honest that man may be, when you come home you will find he has made extravagant expenditures.

This substitute says you can expend 7 per cent. for general purposes, but for waterworks that ought to come under general expenses, for sewerage and for street and sidewalk improvements of all kinds, you may spend whatever you may see fit to. After carefully studying this, I say that the debt limit is not for the benefit of the people, but for the benefit of the bondholders, and I say that for this reason: Our courts have a way of holding that you cannot mandamus a city and make it appropriate its general fund or the money it derives from taxation for the payment of interest on a bonded debt until it shall have expended whatever money was necessary for general expenses. Suppose 7 per cent. is not enough for the general expenses. Suppose, in other words, a city becomes indebted in an amount greater than 7 per cent., and a bondholder comes up and says "you cannot pay one dime of that debt you have created for general purposes, we will go to the courts and mandamus you against paying the debt created for general purposes and force you to apply it to the payment of interest on the bonded debt," and Mr. Bondholder says allow an unlimited bonded debt of the character we deal in. I say it would be better to lay the whole matter on the table than to let this substitute become the law.

I am entirely impartial in this matter and I am willing to admit there is no provision in the Section as reported to meet the necessities of Montgomery, Birmingham and other towns, and that there ought to be some provision and that if you want to put a

debt for paving streets on abutting property holders and let the city endorse that, that there should be some power to do it but not to this extent. There are smaller cities in Alabama who are not entitled to the luxury of water works, and gas, and electric light plants and paved streets and they ought not to be allowed to float bonds for these purposes. Such expenditures would be pure extravagance. The smaller towns do not need these things.

I made the proposition to the gentleman from Lauderdale awhile ago and you heard it made by the gentleman from Greene, why not make an exception to your cities? Why not? These cities have a right to levy taxes to 1 per cent. of the taxable value where the other towns have only a right to levy one-half of 1 per cent. Their income per \$100 of the taxable property is double that of other cities and they should have a right to create a larger bonded indebtedness. If your income is \$2,000 and mine is \$1,000, you can safely incur a greater debt than I can, but, gentlemen, I propose to leave this Section just as reported, which will suit the larger number of cities and then if these other cities want to be excepted, we can except them. You have it now because it provides that the Section shall not apply to cities over 6,000 inhabitants, but there are a number of cities under 6,000 that long before another Constitution will be over 6,000, and who don't want any such provision.

MR. HARRISON—Are there seven cities in Alabama that have the right to levy one-half additional tax?

MR. BROWNE—No, sir. I have said to the gentleman like the gentleman from Greene said, why not make exceptions to their cities. The truth is they don't want to call attention to their adversities. There is the milk in the cocoanut. They recognize that it makes against the city to have it known that they have a right to create an enormous debt.

MR. PILLANS—We have no such feeling in the world.

MR. WEATHERLY—The gentleman can except us also.

MR. BROWNE—Then we have it down to the gentleman from Lauderdale and we can compromise in a moment. We have it in here cities over 7,000. There may be a city over 6,000 that don't want the limit. If we have this shall not apply to the city of Mobile, and Birmingham, which can do so and so, that looks to me like it would end the matter. And I understand Montgomery wants to come in and be allowed to levy a greater amount.

MR. SANFORD—Montgomery is not willing to it, whatever may be the views of some of the delegates.

MR. BROWNE—If the Convention wants to give to these cities the right they ask, don't put it on every other city in Ala-

bama when they are not asking for it—don't allow them to create tremendous debts when they are not requesting it. I am opposed to reckless and extravagant expenditures. My town has been burnt and I am one of the children who dread the fire. I am willing for any city which desires to have what it wants in this regard, but I don't want to put in a general limit that may cover some towns that don't want it.

MR. REESE—What objection will there be to saying a city of 6,000 according to the last census?

MR. BROWNE—That would satisfy me.

MR. HARRISON—Don't you carry out the spirit of the proposed limit if you allow those cities and towns a greater rate that they ought to levy a greater rate of taxation so as not to contract a debt without a reasonable probability of paying?

MR. BROWNE—I think so. No city that levies a tax of one-half of 1 per cent. can pay a debt greater than 5 per cent. of its taxable value, or pay the interest on it. Of course there is allowed by the Committee's report 3 per cent. for waterworks and electric light and gas plants which are of course sources of revenue but whenever a city goes in debt to a greater extent than 5 per cent. of the taxable value it is bound to default in payment of interest if it cannot levy a greater rate than one-half of 1 per cent.

MR. PILLANS—If a city buys waterworks with which it increases its revenue, would that be lessening the ability to pay?

MR. BROWNE—I answered that before you asked it.

MR. PILLANS—I beg pardon. Or if the cost or a great part of it, of payments is paid by the abutting property owner, is that a permanent charge against the city?

MR. BROWNE—I thank the gentleman for the suggestion. I for one care not what Montgomery has, if you want to confiscate the property of your citizens as it is charged upon the floor of this House you are engaged in doing now to some extent; you may go on and do it, but we do not want that law to be enforced all over the State of Alabama. I drew up an amendment to this section, but it was not acceptable, providing that there should not be assessed against abutting properties for street, sidewalk and sewerage improvements a greater amount than 10 per cent. of the property, and they said that was not enough.

MR. PILLANS—May I ask a question?

MR. BROWNE—Yes.

MR. PILLANS — Do you not recognize that non-resident

owners of vacant lots ought to pay, not according to a percentage of the value of the property, but according to the front foot, when the people on each side by heavy expenditures in building have increased the value and usefulness of such vacant lot?

MR. BROWNE—I do not know how that is. I know in some towns they will build a sidewalk for you, and in less than two years will tear it up and build another. It always did seem to me there was a job in it, but I have known it to be done.

Now, no doubt upon one proposition, under the recent decisions of the Supreme Court of the United States it has become the law of the land, not of the State of Alabama, but it probably would be in case they sued in the Federal Court, that you can absolutely confiscate property for street improvement.

MR. MACDONALD — You mean only in cases where the Legislature permits such a thing to be done, not that it is the law?

MR. BROWNE—Yes. Under the decision of the Supreme Court, the Legislature of Alabama can pass a law that will allow a city to confiscate the property, and there is nothing in our Constitution to justify the court in holding it unconstitutional, and certainly the Supreme Court of the United States, under their last two utterances on this subject, would hold that it is perfectly right and proper. They undertook in overruling the Norwood case, to say they did not overrule it, but in effect they did, because one of those cases is where they assessed suburban property going out to a park, for street improvement, for the benefit of all citizens and visitors, and after the assessment was made they had to sell the property, and the proceeds of the sale did not pay the assessment, but the Supreme Court said it was not a confiscation of that property. They had to explain that they did not overrule the Norwood case. In effect they did, but they said they did not. So, when the courts have come to that pass, where they uphold the absolute confiscation of property, I do not want the town that I represent, or the town that I live in, to have the right to go in debt to an unlimited amount and confiscate the property of its citizens.

I am not opposed to improvements. It has been said by the gentleman from Mobile that he wants them to assess his property. I will state, Mr. President, that on the street where I live in Talladega, the owners for two blocks there have offered to pave the street entirely free of any cost to the city, if the city would make the owners from there to town pave theirs, by charging them one-half the cost and the city paying the other half. I am in favor of this kind of improvement, but I am not in favor of allowing it to be done under the guise of law.

MR. PILLANS—Did the other people agree to do that? Those outside of the two blocks named?

MR. BROWNE—The city has not yet done it, but we think they will.

MR. PILLANS—But if the others do not agree, and it is not made compulsory on them, and you pave your two blocks you can never make the others pave.

MR. BROWNE—There are some poor people living between ourselves and town. One case of two orphan girls, and another case of a widow, and we do not want to confiscate their property.

And another thing, the town of Talladega can get along with 5 per cent., and 3 per cent. for its water works, and then pay one-half for street improvements, but we do not propose to pave our streets in an expensive manner. The town of Talladega has no right to pave as the streets are paved here in Montgomery. A brick sidewalk is all that they ask for.

Now in conclusion we ought not to spend so much time looking at this question from two different standpoints. I admit Montgomery and Birmingham should have relief, but I submit they ought not to say we will take it, and take it in a way that will hurt the other cities and towns in Alabama, or not take it at all.

MR. KNOX—I have supported the Committee on Taxation I believe in every proposition that they have submitted to the Convention, and I have the greatest respect for the ability and wisdom of that committee, but it seems to me that in considering a matter having reference directly to the interest of the cities of the State, we ought to give weight to the committee which has had this matter specially in charge; we ought to consider carefully the recommendations of the Committee on Municipal Corporations, when we come to deal with the delicate questions of municipal taxation.

Now, the argument of the distinguished gentleman, the Chairman of the Committee on Taxation, suggesting that this whole matter will be relieved by exempting the cities of Montgomery, Mobile and Birmingham, from the operation of the law, assumes, Mr. President, that we are not going to have any more cities in Alabama. Why, the State is undergoing a rapid development. We have coming on the cities of Anniston, Huntsville, Florence and Decatur. All of these cities are receiving an impetus of growth, and we hope within a few years we will have many cities like Birmingham, Mobile and Montgomery! And why is it, Mr. President, that these cities are here asking for more latitude in the matter of taxation? It is because, when you build a great city, you must have revenues. This condition is not confined to the



few cities in Alabama. If you will go into Georgia and consider the conditions prevailing in Atlanta and Savannah and other cities, and if you look at other cities in other States, you will find they require ample revenues. You cannot pave streets, you cannot lay sewers, you cannot establish water works without revenues. It seems to me that we ought to go cautiously in this matter. We are establishing a Constitution here that may last for fifty years or may last for a hundred years, and we do not know in that time how many cities in Alabama will be circumstanced just like these cities that the Chairman of the committee now proposes to except from the provisions of the article.

I turn the gentleman's argument back upon him when he suggests here that we except Mobile, Birmingham and Montgomery from the operation of this law, and ask him why he does not instead except Talladega from the operation of the law, which is limited by its terms to cities of over six thousand inhabitants? It seems to me, Mr. President, that the terms of the amendment proposed by the gentleman from Lauderdale sufficiently cover the question and ought to be adopted.

The gentleman from Lauderdale is the author in this Convention of this proposition of limiting the right of cities to create debts. I think he first suggested it. I advocated it in the opening remarks that I made before the Convention, and my mind was prompted to investigation along this line by hearing him discuss the question, and reading several papers on the subject which he had delivered in other cities in this country. He has advocated this restriction, but it seems that when he has sought to enforce his views along that line, some delegates have thought it such a good thing that they want to make the restrictions greater than seem prudent. It seems to me, Mr. President and gentlemen of the Convention, that we should adopt the substitute proposed by the gentleman from Lauderdale, and upon that I move the previous question.

Mr. Coleman (Greene) rose for recognition.

MR. KNOX—If the gentleman from Greene desires to discuss the question I will withdraw the motion.

MR. SANFORD—Would not it necessarily increase taxation if you have no limitation upon the amount of indebtedness which they can contract? Will they not have to increase taxation to meet that larger indebtedness, or go into bankruptcy?

MR. KNOX—I reply to that, Mr. President, by saying that the amendment offered by the gentleman from Lauderdale does limit the power to create debts except that it does not limit it with reference to laying sewers, purchasing water works, and with reference to street improvements, and it seems to me that the

people of these different cities will be able to place sufficient limitation upon the law-making power to protect themselves on that point. When the city of Montgomery purchased the water works here, it was competent for the people of Montgomery to have expressed their views on that question, and had it been contrary to the wishes of the city of Montgomery and its people, I doubt not the purchase would not have been made.

MR. JONES (Montgomery) — Nearly all expressed themselves as in favor of the purchase.

MR. SANFORD—They were in favor of that because it was no burden.

MR. KNOX—There is another clause in the Article reported by the Committee on Municipal Corporations which restricts the issue of bonds, except by a vote of the city that makes it. That is a sufficient limitation, and we should not make an iron-clad rule that will hamper our cities in the future. I move the previous question.

THE PRESIDENT PRO TEM.—Will the gentleman from Calhoun allow the present presiding officer to retire to his desk to offer a little short amendment before that is done.

The President resumed the chair.

MR. CUNNINGHAM—I ask unanimous consent to offer this little bit of an amendment to the original proposition offered by Mr. Weakley. It will cause no debate, but it is pregnant with facts and prospects. "Amendment—After the words Gadsden, insert the word Ensley."

MR. CUNNINGHAM—I hope there is no objection.

There being none, the amendment was allowed.

Mr. Cunningham took the chair.

MR. COLEMAN (Greene)—The honorable President of this Convention commended the delegate from Lauderdale for having been the first person to suggest a limitation upon the tax rate of the cities. We accepted that suggestion with great applause, but the amendment now offered by him shows that suggestion was a promise made but to be broken in performance.

Under the statement of the delegate who last addressed you, he says we ought to assume that there are going to be other cities in the State of Alabama, and that they should be provided for. Mr. President and delegates of the Convention, it is in anticipation that those cities will grown up in our State that we resist this unlimited power of taxation. We have heard from delegates from these cities the condition that they are in, and what need

they have for greater taxation, and it is to provide against that emergency and that contingency that we wish to place a limit upon the power of taxation for cities hereafter to come. It seems to me it will not be out of place at this time to explain what perhaps is not realized by every member of this Convention as to these arguments which have been made in favor of taxing property owners abutting sidewalks and streets. Under the law which prevails in this State the rate of taxation could not exceed the value of the improvements added to the abutting owners. You could assess the abutting owners, but you were controlled by the increased valuation made by the improvements, and there was equity in that provision and I have heard no voice against it, but when the argument is made before this Convention that we should stand by the decisions of the courts, and that legislators should always recognize the decisions of the courts, it suggests a very dangerous proposition. To my mind, courts should be governed by the Legislators, and by conventions, and whenever the court detects a deficiency in the law, and points out the hardships that may operate against the citizens of a State by reason of the defect in the law, it becomes the duty of the Legislature, or body creating the organic law, to provide against the defect, and protect the citizen from imposition and unjust burdens.

Under the late decision of the Supreme Court, it has been said that you may sell all the property adjoining these improvements for the cost. That is the proposition you are now confronted with. Not the one which we supposed prevailed in Alabama, that you could increase the tax up to a point that it enhanced the value, but the whole property may be subjected to the cost. Now, when the courts announced the proposition of that kind, it behooves the legislative powers to interfere and restrain the courts and impose restrictions which will prevent any such unjust exactions. The reason why those decisions are made, is because in the Constitution or in the statutes, there is no legislation respecting the power of the Legislature to confiscate or appropriate property in favor of abutting improvements.

It seems to me when I take occasion to state on behalf of the committee, that the committee has been anxious to meet the views and conditions of the towns in the State, we propose, as a committee, to except these towns, if they desire to be excepted, and they decline to do so, and when the suggestion has been made here, time and again, are you willing to have your town or city excepted, we have been met with a refusal. Now, will the delegates to this Convention consider whether it is right or not for the remainder of the State to have a burden placed upon it, in order to accommodate the cities mentioned, rather than relieve the balance of the State, and except those cities? I judge there is not a man in this Convention who will object to excepting the cities named, except perhaps the city of Montgomery. There the dele-

gates seem to be divided, and it becomes the duty of this Convention to determine as between the two parties representing Montgomery which is the better plan, and to decide according to law, but as for the other cities, I venture to assert there is not one single objection, and why should they insist upon driving the balance of the State down, in order to pass us along with them? What injustice is it to except them by name and relieve the balance of the State? What unfairness is there in it? Why should not they be named, and if they desire to be excepted, give them all the latitude they want? This Convention will no doubt accept that proposition. We have made it time and again, but if, as intimated on the floor, these cities have formed a combination and will not desert each other, then I say to the delegates of the Convention, you who represent the taxpayers of this State, it becomes you to look well to your own interests and to their interests. We should protect the people whom we represent, and if these cities are not willing to be excepted, they should abide the consequences.

MR. KNOX—I move the previous question upon the original section and pending amendment.

Mr. Lowe (Jefferson) sought recognition.

THE PRESIDENT PRO TEM—For what purpose does the gentleman rise?

MR. LOWE (Jefferson)—I rise to suggest to the gentleman who made the motion, that an amendment is to be offered now, providing for the contingency of excepting certain cities.

MR. KNOX—Then I suggest that the previous question be restricted to the amendment.

MR. BROWNE—To the two amendments—limit it to both.

THE PRESIDENT—The previous question has been called on the amendment offered by the gentleman from Madison, and the amendment offered by the gentleman from Lauderdale. The question is shall the main question be ordered on the two amendments offered to the report of the Committee on Taxation?

The main question was ordered.

The clerk was directed to read the amendment by Mr. Walker.

MR. JONES (Montgomery)—I rise to a point of order. There was a substitute offered—

THE PRESIDENT PRO TEM—The substitute was offered by the gentleman from Lauderdale, and to the substitute the gentleman from Madison offered an amendment, which is now the pending question.

The amendment to the substitute was read.

MR. SANFORD—I call for the ayes and noes.

MR. WATTS—I move to lay the amendment on the table.

THE PRESIDENT PRO TEM—The motion is out of order, the previous question having already been ordered.

The call for the ayes and noes was sustained by the requisite number rising.

THE PRESIDENT PRO TEM. — The question is on the adoption of the amendment. Those in favor of the amendment will vote aye, and those opposed, no, when your names are called.

MR. PILLANS—I suppose it is perfectly well understood that the amendment now being voted on is the amendment offered by the gentleman from Madison.

THE PRESIDENT PRO TEM—It is.

During the call of the roll.

MR. BAREFIELD—I am paired with Mr. Miller of Maren-go. If he were here he would vote aye and I would vote no.

MR. deGRAFFENREID—I am paired with the gentleman from Dallas, Mr. Craig. If he were here he would vote aye and I would vote no.

MR. STEWART—I am paired with some gentleman whose name I cannot now recall. I would vote no, but I do not know how the other gentleman would vote.

The call of the roll resulted as follows:

# AYES

Beavers,	Fletcher,	Oates,
Browne,	Foshee,	O'Rear,
Bulger,	Freeman,	Palmer,
Byars,	Glover,	Phillips,
Carnathan,	Grayson,	Rogers (Sumter),
Chapman,	Kirk,	Sanford,
Cobb,	Leigh,	Smith, Morgan M.
Cofer,	Lowe, of Lawrence,	Spragins,
Coleman, of Greene,	Malone,	Walker,
Espy,	Maxwell,	
Fitts,	Moody,	

TOTAL—31.

## NOES

Messrs. President,	Hood,	Pettus,
Ashcraft,	Howell,	Pillans,
Banks,	Howze,	Pitts,
Beddow,	Inge,	Porter,
Bethune,	Jenkins,	Proctor,
Blackwell,	Jones, of Bibb,	Reese,
Boone,	Jones, of Hale,	Renfro,
Brooks,	Jones, of Montgomery,	Reynolds (Chilton),
Burnett,	Jones, of Wilcox,	Reynolds, of Henry,
Burns,	Kirkland,	Rogers (Lowndes),
Cardon,	Knight,	Sanders,
Carmichael, of Colbert,	Kyle,	Searcy,
Carmichael, of Coffee,	Locklin,	Selheimer,
Cornwall,	Lomax,	Sentell,
Cunningham,	Long, of Walker,	Sloan,
Davis, of Etowah,	Lowe, of Jefferson,	Smith (Mobile),
Dent,	Macdonald,	Smith, Mac. A.,
Duke,	McMillan (Wilcox),	Sorrell,
Eley,	Martin,	Stoddard,
Eyster,	Miller (Wilcox),	Thompson,
Ferguson,	Mulkey,	Waddell,
Foster,	Murphree,	Watts,
Graham, of Montgomery,	NeSmith,	Weakley,
Graham, of Talladega,	Norman,	Weatherly,
Haley,	Norwood,	White,
Harrison,	O'Neal (Lauderdale),	Williams (Barbour),
Heflin, of Chambers,	O'Neill, of Jefferson,	Williams (Marengo),
Heflin, of Randolph,	Opp,	Wilson (Washington),
Henderson,	Parker (Cullman),	Winn,
Hodges,	Parker (Elmore),	

TOTAL—89

## ABSENT OR NOT VOTING

Altman,	Greer, of Perry,	Robinson,
Almon,	Handley,	Samford,
Barefield,	Hinson,	Sollie,
Bartlett,	Jackson,	Spears,
Case,	King,	Stewart,
Coleman, of Walker,	Ledbetter,	Tayloe,
Craig,	Long, of Butler,	Vaughan,
Davis, of DeKalb,	McMillan, of Baldwin,	Whiteside,
deGraffenreid,	Merrill,	Willet,
Gilmore,	Miller (Marengo),	Williams (Elmore),
Grant,	Morrisette,	Wilson (Clarke),
Greer, of Calhoun,	Pearce,	

MR. OATES—I am paired with Mr. Morrisette, the delegate from Monroe, but not knowing how he would vote if he were present, I voted.

By a vote of eighty-nine noes and thirty-one ayes, the amendment to the substitute was lost.

THE PRESIDENT PRO TEM — The question is on the adoption of the substitute offered by the gentleman from Lauderdale.

MR. deGRAFFENREID — I have a substitute I desire to offer.

THE PRESIDENT PRO TEM — It is out of order. The previous question has been ordered on both amendments.

MR. HARRISON — I demand the ayes and noes on that amendment.

THE PRESIDENT PRO TEM — The question is on the adoption of the substitute offered by the gentleman from Lauderdale. As many as favor the adoption will say aye, and those opposed no, as your names are called.

A reading of the substitute was called for, and the clerk read the substitute, and before the reading was concluded the clock struck one.

MR. WATTS—I move that we remain in session until this vote is taken.

THE PRESIDENT PRO TEM—The gentleman moves that the rules be suspended.

MR. deGRAFFENREID — I rise to a point of order. The hour of one has struck and this Convention is adjourned.

THE PRESIDENT PRO TEM—It seems to the chair that the point of order is well taken.

And thereupon the Convention adjourned until 3:30 p. m.

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#### AFTERNOON SESSION

The Convention reconvened at 3:30 p. m.

THE PRESIDENT—The question before the Convention will be on the adoption of the substitute proposed by the gentleman from Lauderdale to Section 10, reported by the Committee on Taxation. The ayes and noes have been called and the call

sustained. As many as favor the adoption of the substitute will say aye, and those opposed no, as your names are called.

MR. OPP—I desire to obtain unanimous consent to amend the substitute of the gentleman from Lauderdale by adding the words “town of Andalusia” after the word “Ensley.”

There being no objection the amendment was incorporated into the substitute as requested.

MR. REESE—I ask that the substitute be read.

The substitute was again read.

MR. WEAKLEY—Before proceeding with the vote, it appears in the draft of the bill, one Section was omitted which was intended to go in there, and it has been called to my attention by the Chairman of the Taxation Committee. I ask unanimous consent that the substitute be amended in that respect.

MR. SANFORD—I make a point of order that it is too late to make amendments.

MR. BULGER—Read it.

The amendment was read as follows:

Insert after the words “may be created” where they first appear in the substitute “provided this limitation shall not apply to any debt now authorized by law to be created.

There being no objection, the amendment was incorporated into the substitute.

MR. EYSTER—I ask unanimous consent to add a couple of words. Add the words “Decatur and New Decatur” after the words “town of Andalusia.”

There being no objection, the substitute was amended by making the addition as requested.

Thereupon during the call of the roll:

MR. BAREFIELD—I am paired with Mr. Miller of Maren-go, if he was here he would vote no and I would vote aye.

MR. GLOVER—I am paired with Mr. Mulkey. If he were here he would vote aye and I would vote no.

And the call of the roll resulted as follows:



AYES

Messrs. President,	Heflin, of Randolph,	O'Rear,
Ashcraft,	Hood,	Palmer,
Banks,	Howell,	Parker, of Cullman,
Beddow,	Howze,	Parker, of Elmore,
Blackwell,	Inge,	Pettus,
Boone,	Jenkins,	Pillans,
Brooks,	Jones, of Bibb,	Pitts,
Bulger,	Jones, of Hale,	Porter,
Burns,	Jones, of Montgomery,	Proctor,
Cardon,	Jones, of Wilcox,	Rogers, of Lowndes,
Carmichael, of Colbert,	Kirkland,	Sanders,
Carmichael, of Coffee,	Knight,	Selheimer,
Cornwall,	Kyle,	Smith, of Mobile,
Cunningham,	Locklin,	Smith, Mac. A.,
Davis, of Etowah,	Lomax,	Thompson,
Dent,	Long, of Walker,	Waddell,
Eley,	Lowe, of Jefferson,	Watts,
Eyster,	McMillan, of Wilcox,	Weakley,
Ferguson,	Martin,	Weatherly,
Fletcher,	Merrill,	White,
Foster,	Miller, of Wilcox,	Williams, of Barbour,
Freeman,	Norman,	Williams, of Marengo,
Graham, of Montgomery,	Norwood,	Wilson, of Clarke,
Graham, of Talladega,	O'Neal, of Lauderdale,	Wilson, of Washington,
Grayson,	O'Neill (Jefferson),	
Haley,	Opp,	

TOTAL—77

NOES

Browne,	Kirk,	Rogers, of Sumter,
Burnett,	Leigh,	Sanford,
Byars,	Lowe, of Lawrence,	Searcy,
Carnathon,	MacDonald,	Sentell,
Chapman,	Malone,	Sloan,
Cobb,	Maxwell,	Smith, Morgan M.,
Cofer,	Moody,	Sorrell,
Coleman, of Greene,	Murphree,	Spragins,
Fitts,	Oates,	Stewart,
Foshee,	Phillips,	Walker,
Harrison,	Reese,	Winn,
Hodges,	Renfro,	
Jackson,	Reynolds (Henry),	

TOTAL—37

## ABSENT OR NOT VOTING

Almon,	Glover,	Mulkey,
Altman,	Grant,	NeSmith,
Barefield,	Greer, of Calhoun.	Pearce,
Bartlett,	Greer, of Perry,	Reynolds, of Chilton,
Beavers,	Handley,	Robinson,
Bethune,	Heflin, of Chambers,	Samford,
Case,	Henderson,	Sollie,
Coleman, of Walker,	Hinson,	Spears,
Craig,	King,	Studdard.
Davis, of DeKalb,	Ledbetter,	Tayloe,
deGraffenreid,	Long, of Butler,	Vaughan,
Duke,	McMillan (Baldwin),	Whiteside,
Espy,	Miller, of Marengo,	Willet,
Gilmore,	Morrisette,	Williams, of Elmore,

MR. WEAKLEY—I move the previous question upon the Section as amended.

MR. MACDONALD—I would ask the gentleman to withdraw that, as I desire to present an amendment.

THE PRESIDENT PRO TEM (Mr. Cunningham)—Does the gentleman withdraw the call for the previous question?

MR. WEAKLEY—No sir.

MR. BROWNE—I move to lay the Section on the table.

MR. LOWE (Jefferson)—I rise to a point of order.

THE PRESIDENT PRO TEM—The gentleman will state the point of order.

MR. LOWE (Jefferson)—The previous question has been ordered.

THE PRESIDENT PRO TEM—The previous question having been moved, not ordered, the point of order is not well taken and the question is on the motion to table.

A vote being taken the Convention refused to table.

THE PRESIDENT PRO TEM—The question recurs on the call for the previous question and the question is shall the main question be put? For what purpose did the gentleman from Mobile (Mr. Pillans) rise?

MR. PILLANS—I thought the question had lapsed and I was going to renew it.

A vote being taken, the previous question was ordered, and a further vote being taken the Section as amended was adopted.

MR. BROWNE—I offer an additional Section.

The Section was read as follows :

Amendment to Article XL :

Add an additional Section and number the same Section 5 as follows :

Sec. 5. No county in this State shall be authorized to levy a larger rate of taxation in any one year, on the value of the taxable property therein, than one-half of 1 per centum. Provided, that to pay debts existing at the ratification of the Constitution of 1875, an additional rate of one-fourth of 1 per centum may be levied and collected which shall be exclusively appropriated to the payment of such debts or the interest thereon: Provided further, that to pay any debt or liability now existing against any county, incurred for the erection, construction and maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection and maintenance of necessary public buildings, bridges or roads, any county may levy and collect such special taxes, not to exceed a rate of one-fourth of 1 per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purpose for which the same were so levied and collected; provided further, that for additional aid to the public schools any county may levy and collect such special tax as may be authorized by law, provided such tax, at the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county and voted for by a three-fifths majority thereof voting at such election; but the rate of such special tax shall not increase the rate of taxation in any one year to more than \$1.25 on every \$100 worth of taxable property, for all State and county purposes, excluding special taxes for necessary public buildings, roads, bridges and payment of debts existing at the ratification of the Constitution at 1875; and provided, further, that such tax for schools shall be apportioned equitably and paid through the proper school officials to the public schools for white and those for colored pupils respectively, by the Court of County Commissioners or Board of Revenue, and that the amount apportioned to white schools shall be paid to each in proportion the number of pupils therein bears to the total number in all such white schools, and the amount apportioned to colored schools shall be paid to them in like manner.

MR. BROWNE—It is proposed that this amendment shall be incorporated in the Article as Section 5. Section 5 as reported by the Committee was laid on the table.

MR. FOSTER—Was not that Section laid on the table the other day to be taken up and considered with the report of the Committee on Education?

MR. BROWNE—No, sir. I will state to the Convention and to the President if they will listen, how that matter stands.

Section 5 as reported by the Committee was laid on the table. The gentleman from Tallapoosa first moved to lay on the table certain amendments and the proviso to the Section. The Chair started to put the question and a point of order was made that the gentleman from Tallapoosa could not move to lay part of a Section on the table. That point of order was sustained and the gentleman from Tallapoosa thereupon moved to lay the section as amended on the table, without anything further. This Section proposed has some features like Section 5 as originally proposed, but it is different. I could move to take Section 5 from the table—

MR. KIRKLAND—I rise to a point of order.

THE PRESIDENT PRO TEM—The gentleman will state his point of order.

MR. KIRKLAND—If I understand it, the Section the gentleman now promises to amend is now on the table to await the pleasure of the Convention, to be considered along with the like Section of the Committee on Education. If this is so, the Section cannot be amended and I make that point of order.

MR. BROWNE—But that is not so.

MR. KIRKLAND—The record will show it; and if the record shows differently I will abide by it.

MR. BROWNE—This is not the section as laid on the table. I would like to know how the chair can rule unless the chair will give attention to what is in the other section and in this.

THE PRESIDENT (Mr. Knox)—The Chair will hear from the gentleman from Talladega and will then hear from the gentleman from Dale if he desires further to address the Chair on the point of order.

MR. KIRKLAND — I only want to know what the record shows. If the record shows that I am right I shall insist on my point of order.

THE PRESIDENT—Does the gentleman desire the section that was laid on the table read.

MR. BROWNE—I object. I did not yield for any such purpose. The gentleman has no right to interrupt a gentleman by referring to the record of several days ago for the purpose of having it read. I object, and insist that the Chair should hear an explanation of the difference between this section and the section that was laid on the table.

THE PRESIDENT—The Chair is of the opinion that the gentleman would not have the right to amend a section upon the table but he would have a right to add to the article as reported an additional section. Now whether this is the same article that was laid on the table it is difficult to determine, but from the statement of the gentleman from Talladega it seems to the Chair it is not.

MR. LOMAX—I submit that the section now offered by the gentleman from Talladega is nothing but a substitute for Section 5 which was laid on the table and consequently is an amendment to that section and unless that section is taken from the table this proposition cannot be considered.

MR. BROWNE—I would like to be heard on that section.

THE PRESIDENT—The gentleman can make his statement.

MR. BROWNE—Section 5 was laid on the table.

MR. O'NEAL (Lauderdale)—No, sir; it was postponed.

MR. BROWNE—It was laid on the table, not postponed as the gentleman asserts, until some other committee reports. I will state again exactly how it occurred.

MR. KIRKLAND—I call for the reading of the record on my point of order.

THE PRESIDENT—The Chair will direct the Clerk to read the section that was laid on the table and will then hear from the delegate from Talladega.

MR. BROWNE—I desire to state that the gentlemen are entirely misinformed as to what was done with that section. The gentleman from Tallapoosa moved to lay the pending amendments and a proviso of that section upon the table—

MR. BOONE—The record is the best evidence and that has been called for.

MR. BROWNE—I am speaking to a parliamentary inquiry. The gentleman from Tallapoosa moved to lay the pending amendments and a proviso of the section upon the table. The point of order being made, the Chair held it was not in order to lay on the table a portion of a section that was under consideration and the gentleman from Tallapoosa then moved to lay the section and amendments on the table.

MR. KIRKLAND—I hope the Chair will pardon me, but I call for the reading of the record in regard to this matter. The gentleman says I am misinformed. The record will determine that fact.

THE PRESIDENT—The Chair wishes to hear the statement of the gentleman from Talladega in order to rule intelligently upon the point of order, and the Chair will direct a reading of the section which was laid on the table and after hearing both sides of the question will endeavor to rule as best he can.

MR. BROWNE—The gentleman from Tallapoosa moved to lay the amendments to this section and a proviso to this section upon the table. The Chair, upon a point of order being made, held that that motion could not be made to lay part of a section on the table. The gentleman's motion at that time was that it be taken up and considered at the time the report of the Educational Committee was considered. That was ruled out of order and the gentleman from Tallapoosa then moved that the pending amendments and the whole section be laid upon the table and he did not include in that motion that it should never be taken up again. That motion carried. Now the section that was laid upon the table was Section 5. I do not care whether you call this Section 5 or any other section, but as there is no Section 5 and as there is a blank between Sections 4 and 6, I offer this as Section 5. The section that was laid upon the table provided for a vote of a tax for educational purposes by the qualified electors who were property tax payers, and further provided it must be by a majority of the tax payers in number and representing a majority of the property. It provided further that the fund so created should be apportioned equitably by the court of County Commissioners and paid to all the schools in the county. This one provides that it may be voted for or against by all the qualified electors of the county—that before taking effect it shall be voted for by three-fifths majority of the qualified electors. It provides that the tax, if levied, shall be by the Commissioners' Court apportioned between the schools for white and those for colored in the county. It is entirely and essentially different in that it provides that the Commissioners shall divide the tax into two funds, one for white schools and one for colored schools. There is no such provision in the other section which was laid on the table. It further provides (whereas in the other it was left to the Commissioners' Court to equitably divide it between the schools), that after this fund shall have been so apportioned between the two races the amount apportioned to the white schools shall be paid to each of such schools within the county in the proportion that the number of pupils in that school bears to the whole number of pupils in the white schools in the county, and that the amount apportioned to the colored schools shall be divided among the colored schools in like manner. A further difference is this: The section laid on the table provided that to pay any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary

public buildings or roads, shall not exceed one-fourth of one per cent. as may have been or may hereafter be authorized by law. While in this section the word "maintenance" is put in after the word "erection." The section laid on the table provides "but the rate of such special tax shall not increase the rate of taxation in any one year to more than \$1.25 on every \$100 worth of taxable property for all State and county purposes, excluding any special tax for the erection, construction and maintenance of necessary public buildings, bridges and roads." This one says "excluding special taxes for necessary public buildings, roads and bridges, and the payment of debts existing at the ratification of the Constitution of 1875." These are the essential differences between the two sections and the system is entirely different. I would like to state further that I do not know why gentlemen object, but the gentleman from Lauderdale (Mr. Ashcraft) at whose instance the other section was laid upon the table—

MR. LOWE (Jefferson)—I rise to a point of order. A point of order has been made and the gentleman is discussing other matters.

MR. BROWNE—I was just further explaining, but if gentlemen do not wish to be informed—

MR. BULGER—How much may be levied under that section for school purposes?

MR. LOWE (Jefferson)—I rise to a point of order. The inquiry is not germane to the point of order submitted to the chair.

THE PRESIDENT—The gentleman from Tallapoosa is asking the gentleman from Talladega to explain the proposition that he offers now as an additional section, and it seems to the chair it would be permissible for him to do so, and for us all to understand what it is to see whether this section offered is the same as the one laid on the table. The point of order is not well taken.

MR. BROWNE — Under this amendment, a county could levy the difference between one dollar and fifteen cents and one dollar and a quarter, which is ten cents on the \$100, notwithstanding that a county may be levying one-fourth or one-half per cent to pay debts created prior to 1875.

MR. BULGER—Under that provision, can any county levy more than one mill?

MR. BROWNE—Not unless the Legislature should levy a lower rate than 65 cents. If the Legislature, at any time in the future, levies less than 65 cents, the county, by a three-fifths vote of the qualified electors voting at an election thereon, can levy the difference between 65 cents and the rate levied by the Legislature, in addition to the one mill.

MR. KIRKLAND—I insist on my point of order. I want the record read.

The clerk read the journal of the thirty-fifth day as follows: “Unfinished business.—The Convention proceeded to the consideration of the unfinished business, which was the consideration of the report of the Committee on Taxation. The question was upon the substitute offered by Mr. Merrill for the amendment offered by Mr. Cunningham to Section 5 of Article XI of the report by the Committee on Taxation. Mr. Bulger moved to table Section 5, and the pending amendments thereto, to be taken from the table, and be considered with the report of the Committee on Education. The motion prevailed, and Section 5 and pending amendments were laid upon the table.”

MR. KIRKLAND—I do not care for the reading of Section 5. I think every member in this Convention knows that this section now offered is simply a substitute for Section 5.

MR. BROWNE—I call for a reading of Section 5 as laid on the table, and I ask the President to read the section now offered and to note the difference.

Section 5 of the report of the Committee on Taxation was read as follows:

Sec. 5. No county in this State shall be authorized to levy a larger rate of taxation in any one year, on the value of the taxable property therein, than 1-2 of 1 per centum. Provided, that to pay debts existing at the ratification of the Constitution of 1875, an additional rate of 1-4 of 1 per centum may be levied and collected, which shall be exclusively appropriated to the payment of such debts or the interest thereon; provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction and maintenance of the necessary public buildings, or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges or roads, any county may levy and collect such special taxes not to exceed a rate of 1-4 of 1 per centum, as may be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected; provided, further, that for the maintenance of public schools any county may levy and collect such special tax as may be authorized by law; provided, such special tax, the time it is to continue and the purposes thereof, shall have been first submitted to a vote of the property tax payers who are qualified electors in said county, and voted for by a majority thereof in numbers, and in value of taxable property, voting at such election; provided, that the rate of such special tax for maintenance of public schools shall not increase the rate of taxation in any one year to more than \$1.25 on every \$100 worth of taxable property, for all State and county



purposes, excluding any special tax for the erection, construction and maintenance of necessary public buildings, bridges and roads; and, provided, further, that such special tax for schools shall be apportioned equitably and paid to the public schools of such county, by the Court of County Commissioners or Board of Revenue thereof.

The amendment offered by the delegate from Jefferson (Mr. Cunningham) was read as follows:

Amend Section 5 by striking out in the fifteenth line the phrase, "property tax payers who are" and in the sixteenth and seventeenth lines the following words "in numbers and value of taxable property."

The substitute offered by the delegate from Barbour (Mr. Merrill) was read as follows:

Substitute for the amendment to Section 5 of the Article 5 of the Article on Taxation, in line sixteen, after the word "by" insert the letter "a," and after the word majority, insert "of two-thirds," and strike out of lines sixteen and seventeen the words "in number and in value of the taxable property."

THE PRESIDENT—Does the gentleman from Dale desire to say anything further?

MR. KIRKLAND—No, sir.

THE PRESIDENT—It seems to the chair that the Section now offered is materially different from that which was laid on the table and that the Committee may, if it desires, abandon that section and go ahead and add an additional section and that it would not be necessary for the Committee to wait until the Section is taken from the table before completing the Article. They may go ahead and add an additional section and if delegates desire to incorporate into this section the same materials embodied in amendments to the old section which was tabled they can offer them as amendments to this additional section.

MR. LOMAX—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman will state the inquiry.

MR. LOMAX—Has this Committee or any Committee of this Convention, the right to take from the Convention an article or section which the Convention has laid upon the table for future consideration by proposing, previous to the time the Convention has shown a willingness to take that section from the table another section, which is merely a substitute for the section that has been tabled? I submit that would be the effect of allowing the committee to offer this section now.

THE PRESIDENT—The Chair is of the opinion that the Convention may now, if it desires, take the section from the table and substitute it for the section proposed by the Committee, that it is in the pleasure of the Convention whether it will take this section from the table or let it lie there, but the Committee would not have to await the completion of its work and the completion of the Article, it may go on and propose an additional section which is materially different from the section on the table. The Chair will recognize the gentleman from Dale.

MR. KIRKLAND — I move that the substitute or amendment or whatever it is, be laid on the table.

THE PRESIDENT—The Chair recognized the gentleman to discuss the point of order. The gentleman from Talladega has the floor.

MR. KIRKLAND—I understood the Chair recognized me. The Chair had ruled on my point of order and against it, and I did not rise to discuss the point of order at all.

THE PRESIDENT—While the gentleman from Talladega has the floor the Chair could not recognize any other delegate except on a point of order or parliamentary inquiry. The Chair could not displace the gentleman from Talladega.

MR. KIRKLAND—Then I raise the point of order on the gentleman from Talladega that his time is out. He has occupied the floor for more than ten minutes.

MR. BROWNE—That is a daisy. I have not occupied the floor ten minutes, but the gentleman interrupting have. I do not want but my ten minutes, but the amendment has just been read and I have barely started.

THE PRESIDENT—The Chair is embarrassed in ruling on that, because the Chair has been so interested on the point of order of the gentleman from Dale that he has not kept the time of the gentleman from Talladega. The gentleman from Talladega will proceed.

MR. BROWNE—Before I say anything on that subject I want to commend the gentleman from Dale for his energy and activity in trying to defeat any measure that may be proposed to this Convention looking towards the education of the boys and girls, not only barefooted ones, but boys and girls with shoes on as well.

MR. KIRKLAND—Will the gentleman please speak louder. We are at least entitled to hear what he is saying.

MR. BROWNE—Come farther front, then.

The Suffrage Committee has reported an Article on Suffrage that will, after three years, disfranchise thousands of white boys in the State of Alabama unless ample school facilities are provided for them. We have now in Alabama but three to four months public schools; under the provision of this Section we can add to the school fund of the State of Alabama \$250,000.

MR. CORNWELL—Will the gentleman permit an interruption?

MR. BROWNE—Certainly.

MR. CORNWELL—The gentleman seems so much interested in the education of our boys I would like to inquire why he don't say a majority of the qualified voters shall pass on this question instead of three-fifths?

MR. BROWNE—I have been working all my life to be a millionaire and I have made only a few hundred dollars, but I don't propose to throw that away because I cannot get the million. If the gentleman has the capacity to get this Convention to adopt an amendment providing for a bare majority, I will be well satisfied.

Under this section if adopted the State will have an additional \$250,000 for the public schools, provided the counties see fit to levy the tax. It may be and probably is true that some counties of the State of Alabama will not even endeavor to levy this tax, but numerous counties will levy it and supplement the school fund. I do not know how statistics show up in other counties but in my county this tax being levied would result in giving about from 75 cents to 90 cents additional to every pupil. I believe the rate now, property, poll tax and all is about \$1.60.

Something has been said and will be said with respect to levying this tax by school districts or townships. That is not practical in the State of Alabama. It would be very unpopular in counties like mine. I will not discuss the counties of other gentlemen. In the county of Talladega we have about seven townships in which are railroad centers, iron furnaces, cotton factories and large mercantile houses and the like. Those townships levying this tax and appropriating it all to their own use would have magnificent schools; all the corporation taxes in the county would be paid to them and the outlying townships would get no benefit. Therefore, throughout the State of Alabama the county unit is much preferable to the township unit.

MR. WHITE—The gentleman says the county unit is better than a township unit, how about the State unit?

MR. BROWNE—The State unit is bad enough, but it has come to stay. The State of Alabama appropriates \$1,200,000. That comes out of the general tax. That is divided as everyone knows

in proportion to the number of children of school age in each county, without regard to whether or not they attend the schools. This proposed section provides after it is apportioned equitably between the two races, that the part apportioned to the white race shall be paid to each school in the proportion that the number of pupils in that school bears to the total number in attendance in all the white schools. If any one desires to get the benefit of this fund he must send his children to the public schools, and he cannot draw the money out and spend it for groceries as has been done in many instances under the present State system.

MR. ROGERS (Sumter)—Will the gentleman allow me to ask a question?

MR. BROWNE—Certainly.

MR. ROGERS (Sumter)—The law requires a certain number of children before there can be a school?

MR. BROWNE—Yes sir.

MR. ROGERS (Sumter)—There are some beats in the Black Belt that have not enough children of school age to make up that number. What would you do with that?

MR. BROWNE — There is a statute that allows them to draw their money out or attend a school in another precinct and get it that way. But that law is not constitutional and could be changed.

MR. ROGERS (Sumter)—And you propose to destroy that?

MR. BROWNE—If you live in a precinct where there are not enough children to have a school you may send them to any public school in that county and your child gets its pro rata share in the other school. That is one of the main advantages of this law over the State system. Under this it makes no difference where your child goes to school so that it is within the county and the child gets its share of this fund.

MR. ROGERS (Sumter)—But in some sections the school houses of another precinct would be so far away that the child could not walk and the parents are not able to buy a carriage for it. In such a case how would the child get the benefit?

MR. BROWNE—Do you mean where the child is not sent to school?

MR. ROGERS — I mean where the child would be so far from the school house in another beat that it could not walk there, and the parents are not able to pay its board to send them there. What do you propose there?

MR. BROWNE—Do you mean what do I propose where the child won't go to the public school?

MR. ROGERS—I don't want you to put my question in any such light. The child is anxious to go——

MR. BROWNE—But does not go in reality?

MR. ROGERS (Sumter)—He cannot go because there is not the requisite number in his beat to make up a public school.

MR. BROWNE—And on account of that, he does not go to any school?

MR. ROGERS—Yes.

MR. BROWNE—Then he gets nothing and ought not to.

MR. ROGERS—Why should he not when his father is contributing as much as any man in the county?

MR. KIRKLAND—I raise the point of order that the gentleman's time has expired.

THE PRESIDENT PRO TEM (Mr. Cunningham) — The present presiding officer does not know when the gentleman began. The gentleman has been speaking five minutes since the present presiding officer took the chair.

MR. BURNS—He is the chairman of a committee. His time is not limited to ten minutes.

THE PRESIDENT PRO TEM.—The chair is of the opinion that this is an amendment and the gentleman is not in the position of a chairman of a committee on that.

MR. FOSTER—Does this section contemplate that the fund shall be divided equally between white and black?

MR. BROWNE—It says it shall be apportioned equitably between them.

MR. FOSTER—Does the gentleman think it is legal to divide it unequally?

MR. BROWNE—Yes; under the Federal decisions.

MR. FOSTER—Do you think that section is legal?

MR. BROWNE—Yes, sir; I know it is, if the judges of the Federal Court know what they are talking about.

MR. FOSTER—You think it is legal to divide it unequally between the races?

MR. BROWNE—Yes, sir; but it cannot be divided arbitrarily according to the amount paid by each race.

MR. FOSTER — Does not this leave it to Commissioners' Courts to divide it as they please?

MR. BROWNE—No, sir; to divide it equitably.

MR. FOSTER—What does "equitably" mean?

MR. BROWNE—Some Commissioners' Courts would construe it one way and some another. The Circuit Court of the United States in *Claybrooke vs. Owensboro* (16 Fed. Rep., 302) held, "The equal protection of the law guaranteed by this amendment must and can only mean that the laws of the States must be equal in their benefit as well as equal in their burdens, and that less would not be 'the equal protection of the laws.' This does not mean absolute equality in distributing the benefits of taxation. This is impracticable; but it does mean the distribution of the benefits upon some fair and equal classification or basis." In other words, they hold that it can be divided equitably, that it is not necessary to divide it according to the number of school children; but it is held in this decision and in other cases, that you cannot divide it according to the amount paid in each race.

Now it is proposed by this section or contemplated that the Boards of Commissioners will supplement the State public school fund with this special tax in such a way as to allow or provide for school terms of equal length for both white and black. And that is certainly equitable. There is no necessity for paying a teacher for a colored school the same amount you pay to white school teachers, because you can get them at much less salary. Under the present laws of Alabama, if the law is carried out, the colored pupil gets the same amount of money per capita as the white pupil, and that is not justice.

MR. ASHCRAFT—I desire to offer a substitute for the amendment offered by the gentleman from Talladega. It is only a substitute for the last provision.

THE PRESIDENT PRO TEM — In other words, it is an amendment.

The clerk—The gentleman will have to tell me the part to which it applies.

MR. ASHCRAFT—It takes the place of the last section.

The amendment was read as follows:

Amend Section 5 of Article IX, as proposed by the amendment by striking out the last provision in said section beginning in the twelfth line thereof, and inserting in lieu of said provision the following:

Sixth—It shall be the duty of the County Superintendent of Education in each county, by and with the advice and consent

of the Court of County Commissioners, or body of like jurisdiction, to organize the white people of the county into white school districts, and the colored people of the county into colored school districts, according to their respective needs and advantages without reference to each other as to territorial boundaries.

Seventh—A trustee, or trustees, or Board of Education, as may be provided by law, shall be elected for white school districts from the white residents of such districts and for the colored school districts from the colored residents of such district; provided, no incorporated town or city maintaining a system of public schools as provided by law, shall be separated into districts without the consent of the Mayor and Board of Aldermen of such town or city.

Eighth — For the purpose of building, enlarging, improving or furnishing school houses in any district, or for the purpose of supplementing the general school funds from Federal, State, county, municipal and other sources, the Court of County Commissioners, or body of like jurisdiction, shall, as hereinafter provided, levy a special assessment of not more than one-tenth of one per centum in any one year upon the property of white persons situated in one white district, or upon the property of colored persons situated in a colored district; provided, no such levy shall be made except upon the request of the qualified voters residing in the district, expressed at an election held for that purpose, at which election two-thirds of those voting must favor the special levy. At such election in a white school district only qualified white electors shall be permitted to vote, and in colored school districts only qualified colored electors shall be permitted to vote. It shall be the duty of the Probate Judge to order such an election upon the petition of not less than one-fourth of the voters who will be entitled to vote at such election. The order for such an election shall state the purposes for which it is proposed to make the assessment, the rate of the proposed assessment, and the number of years during which such assessment is proposed to be made. Notice of such election shall be given and the election held in such manner as may be provided by law for such special elections. No proposition shall be made at any such elections to levy such special assessments during a period of more than four years.

9. When any property belonging to a corporation is situated in a white school district where a special assessment is to be made as herein provided, such assessment shall be levied upon such proportion of the value of such property as the number of white children of school age in the county bears to the whole number of children of school age in the county. When such property is situated in a colored school district where such assessment is to be made, it shall be levied upon such proportion of the value thereof as the number of colored children of school age in the

county bears to the whole number of children of school age in the county.

10. The foregoing sections of this Article numbered 6, 7, 8 and 9 are intended and are hereby declared to constitute an indivisible plan for permitting local special assessments in aid of public schools maintained by the State.

THE PRESIDENT PRO TEM—Does the gentleman offer that as a substitute to the section?

MR. ASHCRAFT—As a substitute for the last provision.

MR. COLEMAN (Greene) — The purpose of having these things laid on the table and printed is so that delegates may inform themselves as to what is to come up before them. It is impossible for the delegates to the Convention to keep in mind long amendments and sections such as these two. I would like to have this amendment and the substitute laid on the table and printed.

THE PRESIDENT PRO TEM—The gentleman from Lauderdale has the floor.

MR. ASHCRAFT — Mr. President, the importance of this measure is the reason why some of the friends of the public schools in this State desire the postponement of the consideration of this question until the report of the Committee on Education should come in. When that report was made, the two phases of the question could be presented by a majority and a minority report, and in that way those provisions would be printed so the members of this Convention might be properly informed about what plan was proposed for local assessments. It is a matter of the highest importance for this Convention to understand this proposition. The great issue in this State, the purpose for which this Convention was called, was to settle upon some just and equitable basis the relation which should exist between the white and colored people in this State. That is the one great question which lies at the heart of the people of Alabama today, and for which they are calling upon us to present a solution. The proper relation which should exist between the two school systems, between the system for educating the colored, and the system for educating the white people, is a matter of as grave concern to the people in this State as the question of the suffrage. I know, sir, that there is no subject which lies so near to the hearts of the people of North Alabama as this great question which is presented by my amendment. It has been wrought out with care, it has been wrought out in the light of the decisions—

MR. LONG (Walker)—I rise to a point of order, Section 47 of the rules provides that all ordinances be read and referred to the different committees and that they be printed. I myself might favor it, but I cannot tell what it is. I make the point of



order that it should be referred to a committee and printed, and also make the point of order on the substitute offered by the Chairman of the committee under Rule 47.

Rule 47. When any ordinance is introduced it shall be read at length and be referred by the President without a vote being taken, unless otherwise ordered by a two-thirds vote of the Convention, to the appropriate committee. No ordinance shall be reported back from any committee until after the lapse of one entire legislative day. When any committee shall have reported to this Convention any article or section of the proposed Constitution, said article or section shall again be read at length and three hundred copies thereof printed for the use of delegates; and such article or section shall lie on the table at least one day and until in regular order it shall be taken up for consideration by the Convention.

THE PRESIDENT PRO TEM.—Ruling upon the point of order made by the gentleman from Walker, the Chair is not at liberty to limit the length of substitutes offered as amendments to pending questions, and therefore overrules the point of order.

MR. LONG (Walker)—Then I make the point of order that there is no original section before the Convention. The original section is on the table and how can you offer a substitute or an amendment to something that is not in existence?

THE PRESIDENT PRO TEM.—The gentleman from Talladega offered his as an original section.

MR. LONG (Walker)—Then Rule 47 covers it.

THE PRESIDENT PRO TEM.—The gentleman from Lauderdale moves as an amendment to that the amendment that has been read in the hearing of the Convention, and therefore the point of order is not well taken.

MR. ROGERS (Sumter)—The ruling of the Chair in reference to the section offered by the gentleman from Talladega, and the ground he gave for allowing this to come up, was that it was entirely different from that laid on the table. I want to know whether it is a different or the same order? If it is a different one under Rule 47 it must be printed and laid upon the table, if the same one then a vote must be taken to take the original from the table and substitute this one under the rules by which we are operating.

THE PRESIDENT PRO TEM.—The Chair rules that the point of order is not well taken, inasmuch as the section offered by the gentleman from Talladega was offered as an amendment to the Article on Taxation. Now the pending question is the amendment of the gentleman from Lauderdale.

MR. ROGERS—With the consent of Mr. Ashcraft, I move that the two amendments be laid upon the table for the purpose of having them printed.

THE PRESIDENT PRO TEM.—The Chair would be delighted to put that motion, but the gentleman from Lauderdale has the floor.

MR. ROGERS—The gentleman yielded to me for that purpose.

THE PRESIDENT PRO TEM.—Does the gentleman from Lauderdale yield?

MR. ASHCRAFT—I yield for that purpose.

THE PRESIDENT PRO TEM.—The gentleman yields the floor to the gentleman from Sumter for the purpose of making a motion.

MR. ROGERS—I move that both sections be laid upon the table for the purpose of having them printed for the benefit of this Convention to pass on wisely, and upon that, Mr. President, I call for the previous question.

THE PRESIDENT PRO TEM.—The gentleman from Lauderdale had the floor, his time had not expired, he yielded the floor, which he had a right to do, during his time to the gentleman from Sumter. The gentleman from Sumter moves that the pending amendments be laid upon the table and ordered printed and upon that he moves the previous question.

MR. LOMAX—I rise for the purpose of amending the resolution, that it lie upon the table until the report of the Committee on Education comes in.

MR. ROGERS—I withdraw the call for the previous question for the purpose of accepting the amendment of the gentleman from Montgomery.

MR. BROWNE—I rise to a point of order. A motion to lay on the table is not debatable.

THE PRESIDENT PRO TEM.—Does the gentleman from Sumter withdraw the motion for the previous question?

MR. ROGERS—No, sir; let the matter go as it is, and the other question can be arranged later.

MR. O'NEAL—If the motion of the gentleman from Sumter prevails, the original section offered by the gentleman from Talladega and the substitute or amendment be printed, will it lay upon the table to await the action of the Convention?

PRESIDENT PRO TEM—Any proposition before a parliamentary body laid upon the table can be taken up at any time. The motion of the gentleman from Sumter is, that the pending amendments be printed and laid upon the table.

MR. BROWNE—Indefinitely?

MR. ROGERS—Be printed and lie upon the table, it is in the pleasure of the Convention to take it up whenever they want to.

MR. BROWNE—Upon that I call for the ayes and nays.

MR. HEFLIN (Chambers)—I understood the motion of the gentleman from Sumter to be that the substitute and amendments to be laid upon the table to be taken up at the time the Committee on Education's report is considered?

THE PRESIDENT PRO TEM—The chair did not so understand the motion of the gentleman from Sumter. Is the call for the ayes and nays sustained?

The call for the ayes and noes was not sustained, and the question recurred upon the adoption of the motion of the gentleman from Sumter which was carried.

MR. LOMAX—I move that that proposed new section offered by the Chairman of the Committee and the substitute or amendment thereto offered by the gentleman from Lauderdale lie upon the table until the coming in of the report of the Committee on Education, and that it be considered along with that report.

PRESIDENT PRO TEM—The gentleman is out of order. It is not before this Convention, you will have to move to take from the table.

MR. BROWNE—All of this Article has been adopted except the one that has just been laid upon the table. There was another laid upon the table at the instance of the gentleman from Lauderdale, Mr. Weakley. It is agreed between the Chairman of the Committee on Municipal Corporations and myself that that section be now taken up and considered. I therefore move to take section 7 from the table.

MR. WEAKLEY (Lauderdale)—The Chairman of the Committee on Taxation has stated to the Chair that an agreement has been made that that section shall be taken up. I rise to state that I did not understand that any such agreement had been made.

MR. BROWNE—Was it not understood that when we got through with the other sections we would take this up and adopt this substitute? As there is nothing else to do with this report except to adopt a section of some kind upon this taxation, and the Committee on Taxation is through, I move to take Section 7 from the table in order to dispose of it in some way.

MR. HARRISON—I would inquire of the Chairmen of the Committees on Taxation and on Municipal Corporations if it would not save time for this matter to be taken from the table and referred to a special committee consisting of the Committee on Taxation and that on Municipal Corporations, and see if they cannot agree?

MR. BROWNE—I would like to state that there is no disagreement between them. It seems the Committee on Municipal Corporations have incorporated a few towns that desire to come in under the Birmingham amendment.

MR. HEFLIN (Chambers)—I rise to a point of order. A motion to take from the table is not debatable.

PRESIDENT PRO TEM.—The point of order is well taken, the chair was indulging the gentlemen so they could come to some agreement.

MR. JONES (Montgomery)—What is Section 7?

MR. BROWNE—The section with regard to municipal taxation.

MR. LOMAX—And also about educational taxation?

MR. LOWE—Does not Section 7 deal with schools?

MR. BROWNE—It is proposed to take it out.

PRESIDENT PRO TEM.—The question is, Shall Section 7 be taken from the table?

Request was made that the section be read.

Objection was made to the reading of the section.

PRESIDENT PRO TEM.—The chair will hold that any gentleman of this Convention has a right to ask for the reading, and the Secretary will read the Section.

Sec. 7. No city, town or other municipal corporation other than provided for in this Article, shall levy or collect a larger rate of taxation, in any one year, on the property thereof, than one-half of one per centum of the value of such property, as assessed for State taxation during the preceding year; provided, that for the payment of debts existing at the time of the ratification of the Constitution of 1875 and the interest thereon, an additional rate of one per centum may be collected, to be applied exclusively to such indebtedness; provided, further, that for the maintenance of public schools, such city, town or other municipal corporation may levy and collect such special tax as may be authorized by law, provided such special tax shall not be levied and collected when it shall cause a greater rate of taxation in any one year than one dollar

and seventy-five cents on every hundred dollars of taxable property, for all State, county and municipal purposes, except the erection, construction and maintenance by counties of necessary public buildings, bridges or roads, and provided such special tax for schools, the time it is to continue and the purposes thereof, shall have been first submitted to a vote of the property taxpayers who are qualified electors in said city, town or other municipal corporations, and voted for by majority thereof, in number, and in value of taxable property, voting at such election, and provided such tax for schools shall be apportioned equitably and paid to the public schools of said city, town or other municipal corporation by the municipal authorities thereof; and provided, this section shall not apply to the city of Mobile, which city may levy a tax not to exceed the rate of three-fourths of one per centum to pay the expenses of the city government, and may also levy a tax not to exceed the rate of three-fourths of one per centum to pay the indebtedness of said city existing at the time of the ratification of the Constitution of 1875 and the interest thereon; provided, further, that this section shall not apply to the city of Birmingham, which city may levy and collect a tax not exceeding one-half of one per centum, in addition to the tax of one-half of one per centum hereinabove allowed to be levied and collected, such special tax to be applied exclusively to the payment of the interest on the bonds of the said city of Birmingham heretofore issued by said city in pursuance of law, and for a sinking fund to pay off said bonds at the maturity thereof.

A vote being taken, the Convention refused to take the Section from the table.

MR. CORNWELL—I have an amendment to that Section which I will ask to have read.

The Clerk read the amendment as follows: That all counties, cities, towns or other municipal corporations, shall create a sinking fund on the issue of any bonds for their redemption by raising annually a sum which will produce an amount equal to the principal and interest of the bonds at their maturity. Provided, that this section shall apply to the issues of bonds for the purpose of refunding the present bonded indebtedness of counties, cities, towns or other municipal corporations.

MR. CORNWELL—I move that that be printed and laid upon the table.

A vote being taken, the amendment was ordered printed and laid upon the table.

MR. MACDONALD—I have an additional section to offer by way of amendment. I do not wish to make any statement in regard to it.

The Clerk read the amendment as follows:

Amend Article reported by the Committee on Taxation by adding the following as an additional Section No. 11.

No city, town or other municipality shall make any assessment for the cost of sidewalk or street paving, or for the cost of the construction of any sewers, against property abutting on such street or sidewalk so paved, or drained by such sewers in excess of the actual increased value of such property by reason of such sidewalk or street paving, or by the construction of such sewers. And the burden of proving such increased value of said property shall be on the city, town or other municipality in all proceedings brought to enforce the collection of such assessments. And such assessments shall in no case exceed five per cent of the assessed value of said property.

MR. WEAKLEY—I move that the Section just read be laid upon the table to be considered along with the report of the Committee on Municipal Corporations bearing upon the same subject.

MR. MACDONALD—I agree to that.

MR. BROWNE—I submit the point of order that he cannot offer an amendment for municipal corporations on an article of the Committee on Taxation. The motion was that it be taken up by the Committee on Municipal Corporations.

MR. MACDONALD—Yes, by either one of the Committees. I don't suppose the Convention will have any objection to that—to be considered along with the report of the Committee on Municipal Corporations.

Mr. Knox took the Chair.

MR. BROWNE—I make the point of order that the gentleman cannot introduce an amendment while the consideration of an article on taxation is up, and move that it be printed and taken up with some other report.

MR. LONG (Walker)—I raise the point of order that that is an ordinance and should be referred to the proper committee.

THE PRESIDENT—The Chair understands the gentleman desires to amend by adding an additional Section, and the gentleman from Lauderdale proposes to be laid on the table and be printed.

MR. MACDONALD—And be printed.

THE PRESIDENT—What was the motion of the gentleman, to lie on the table?

MR. WEAKLEY—Yes.

The vote being taken, the amendment was laid upon the table.

MR. COBB—I wish to offer a resolution to be put upon its passage, and for that reason, I move a suspension of the rules.

The Clerk read the following resolution:

Resolution 224, by Mr. Cobbs:

Resolved, That the reports of the Committee on Suffrage and Elections be taken up at 11 o'clock on Tuesday next for consideration to the exclusion of all other business.

MR. WADDELL—I rise to a point of order. The resolution sent forward by the gentleman requires unanimous consent for suspension of the rules to have it read.

THE PRESIDENT—The Chair has just stated that the motion of the gentleman from Macon was that the rules be suspended and that the resolution be placed upon its immediate passage.

MR. REESE—On the motion made to suspend the rules, I demand the ayes and noes.

The call for the ayes and nays was not sustained.

MR. OATES—The motion as I understand it is to suspend the rules with a view to putting the resolution upon its passage. I desire to be heard for a short time on that if it is debatable.

THE PRESIDENT—A motion to suspend the rules is not debatable.

MR. OATES—Then I desire to be heard after that is acted upon—provided it is carried.

The vote being taken, the motion to suspend the rules was defeated and the resolution was referred to the Committee on Rules.

MR. O'NEAL (Lauderdale)—I have a resolution that I desire to offer.

THE PRESIDENT—The gentleman from Lauderdale asks unanimous consent to introduce a resolution. Is there objection?

MR. O'NEAL—I will state to the Convention it is with reference to the ventilation of the hall.

MR. HOWZE—I object.

MR. BROWNE—The last section of the report of the Committee on Taxation has now been considered and laid upon the table—

THE PRESIDENT—The gentleman from Talladega will suspend a moment, the Chair has not ascertained the will of the Convention whether the gentleman from Lauderdale will be granted leave to introduce a resolution.

Objection was made to the introduction of the resolution.

MR. BROWNE—I now move, so many of the sections of the report of the Committee on Taxation having been adopted, all of them except the two sections laid upon the table—that the sections adopted be engrossed. It is necessary to have it engrossed, and we have an Engrossing Clerk here doing nothing and I call for the engrossment of all the sections that have been adopted, so that when the report comes up on its final passage that the work will have been done.

MR. HOWZE—I dislike to do so, but I rise to a point of order. Rule 52 says after these articles have been passed that they shall be engrossed. I submit that the whole article is not passed and under this rule it cannot be engrossed until it is passed.

THE PRESIDENT—The point of order is well taken.

MR. MACDONALD—I rise to a question of privilege in regard to the amendment proposed by me to the article on taxation.

THE PRESIDENT—The next special order is the consideration of the report of the Committee on Preamble and Declaration of Rights. The gentleman from Montgomery has the floor.

MR. MACDONALD—I wish to state so that the Convention can hear me something in regard to the section which I suggested as an amendment to the report of the Committee on Taxation. There has been some little misunderstanding between myself and Mr. Weakley. Mr. Weakley's agreement with me in regard to that section was that it should be laid on the table and printed.

MR. KIRKLAND—I rise to a point of order. There is nothing before the House.

THE PRESIDENT—The point of order is well taken.

MR. MACDONALD—I move that the section offered by me as an amendment to the report of the Committee on Taxation be taken from the table so that I can make a motion with reference to its disposition, to table it and have it printed and be taken up along with the report of the Committee on Municipal Corporations, which was Mr. Weakley's agreement with me.

A vote being taken the Chair announced that the yeas seemed to have it.



MR. OATES—My colleague could reach the matter by moving to have it printed.

MR. MACDONALD—But I also desire to have it printed and taken from the table at the time the report of the Committee on Municipal Corporations is considered.

A division was called for on the motion to take from the table and the motion was carried by a vote of 53 ayes and 21 noes.

MR. MACDONALD—I move that this section be printed and lie on the table to be taken when the report of the Committee on Municipal Corporations comes before the Convention.

MR. KIRKLAND—I make the point of order that the question before the House according to the announcement of the Chair is the consideration of the report of the Committee on Preamble and Declaration of Rights.

THE PRESIDENT—The Chair thinks the point of order would have been well taken had the gentleman made it before the Convention took up the question of this amendment and took it from the table, but no point was made at that time on that score and the Convention now has the matter up before it for consideration, and the motion is that this amendment be printed and laid on the table, to be taken up and considered along with the report of the Committee on Municipal Corporations.

MR. OATES—The latter part of that is not in order. The gentleman can offer it as an amendment to the report of the Committee on Taxation but he cannot direct that it shall be taken up and considered with the report of the Committee on Municipal Corporations.

THE PRESIDENT—In the opinion of the Chair this amendment is to the article proposed by the Committee on Taxation and it does not seem that it is in order.

MR. CUNNINGHAM — I rise to a point of order. The amendment was offered as a new section of the report of the Committee on Taxation. As such the Convention has taken it from the table and it is now before the Convention and the point of order I make is that the motion of the gentleman is in order to have it printed and have it come up when the report of the Committee on Municipal Corporation is considered. It has been taken from the table and is therefore new business.

MR. JONES (Montgomery)—It is perfectly competent for the Convention to say when it will consider anything, whether it is part of one article or of another.

THE PRESIDENT—The Chair has ruled heretofore that the Convention may lay any proposition on the table to be taken up

at pleasure, but it does not seem that it would be proper to state the specific time to take it up. The Convention takes it up when it sees proper.

MR. PETTUS—The motion of the gentleman was to postpone until the report of the Committee on Municipal Corporations was considered.

THE PRESIDENT—The motion was to lie on the table and be printed, and the gentleman added the additional proposition.

MR. MACDONALD—If it is necessary to put the motion in other phraseology I move that the amendment lie on the table and be postponed until the report of the Committee on Municipal Corporations is considered, and that the amendment be printed.

THE PRESIDENT—The gentleman moves that the further consideration of the amendment proposed by him be postponed until the consideration of the report of the Committee on Municipal Corporations, and that the same be printed. It seems to the Chair that in its present form of amendment is not in order. It is an amendment to the report of the Committee on Taxation.

MR. REESE—I call for the regular order which is the consideration of the report of the Committee on Preamble and Declaration of Rights.

THE PRESIDENT—I will put the question on the motion of the gentleman from Montgomery.

A vote being taken the motion of Mr. Macdonald was carried.

MR. HOWELL—Mr. President, I move to reconsider the vote by which the Convention refused to order the report of the Committee on Taxation engrossed. I think if the Convention understood the question they would allow it to be engrossed. There has been some amendment to it, and the engrossment of the bill don't take it out of a condition where it can be amended and we have an officer that is on the pay roll whether she works or not, and we should have it engrossed. I move that we reconsider the vote by which the House refused to order that article to be engrossed, and then I will move that we order it to be engrossed.

MR. PETTUS—I make the point of order that the motion is out of order, because under Rule 52 it cannot be engrossed until completed.

THE PRESIDENT—In the opinion of the Chair the point of order is well taken. The special order for this time is the consideration of the report of the Committee on Preamble and Declaration of Rights.

MR. LONG (Walker)—Before we get into that, I have a short resolution and I wish unanimous consent to have it read and referred.

To which no objection was made.

MR. LONG (Walker)—I move to suspend the rules, that I may introduce the resolution.

A vote being taken, the rules were suspended and the resolution read as follows:

Resolution No. 225, by Mr. Long (Walker):

Be it resolved by this Convention, That in view of the epidemic which has prevailed since the passage of the "no per diem" resolution in the event of absence, except in cases of sickness a camp of detention or quarantine station is hereby established, wherein sick members may be detained until their respective ailments may be discovered or their cases diagnosed.

Be it further resolved, That the distinguished delegate and physician who is the author of Number 184 Per Diem Resolution, be and is hereby placed in charge of said camp of detention, or quarantine station, without pay. (Laughter).

THE PRESIDENT—The resolution is out of order. There are two minority reports accompanying the report of the Committee on Preamble and Declaration of Rights, but they relate to the amendment of special sections.

MR. LOMAX—I suggest that those minority reports be taken up when those particular sections of the report of the Committee are reached.

THE PRESIDENT—Does that meet with the approval of the gentlemen taking the reports?

MR. WILSON (Washington)—That meets with my approval. I am on one of the minority reports.

MR. BLACKWELL—It meets mine.

MR. BAREFIELD—That is acceptable to me.

MR. WILSON (Washington)—To meet the suggestion of the gentleman from Montgomery, that is the regular order. In other words, it is the regular order to proceed as suggested by the gentleman from Montgomery.

The Preamble was thereupon read as follows:

## PREAMBLE.

We, the people of the State of Alabama, in Convention assembled, in order to establish justice, ensure domestic tranquility and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God—do ordain and establish the following Constitution and form of Government for the State of Alabama:

MR. LOMAX—On behalf of the Committee on Preamble and Declaration of Rights, I move to strike out the words “in Convention assembled” in the first line. I will state our reason for doing so is that an examination of the majority of the Constitutions of the States in the Union show that those words are not used in the preamble of those Constitutions.

Upon a vote being taken the amendment was adopted.

MR. LOMAX—I now move the adoption of the Preamble.

MR. CUNNINGHAM—I move that the vote on the Preamble be taken by a rising vote.

And by a rising vote the Preamble was unanimously adopted.

Subdivision 1 of the Article was read as follows:

## DECLARATION OF RIGHTS.

That the great, general and essential principles of liberty and free government may be recognized and established, we declare:

First—That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.

MR. LOMAX—I will state that the Committee has made no change in that Section of the Declaration of Rights. I move its adoption.

Upon a vote being taken the subdivision was adopted.

Subdivision 2 of the Article was read as follows:

Second—That all persons resident in this State, born in the United States, or who shall have legally declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama, possessing equal civil and political rights.

MR. LOMAX—I move the adoption of that Section of the bill of rights.

MR. SANFORD (Montgomery)—I move to amend that Section by striking out the words "persons who have legally declared their intention of becoming citizens."

THE PRESIDENT—The gentleman will have to reduce his amendment to writing.

MR. SANFORD—I will do it in a moment.

MR. BURNS—While we pause in the proceedings, I desire to ask this Convention to extend the privileges of the floor to the Hon. S. S. Scott, scholar, statesman and poet, and a member of the last Constitutional Convention of Alabama.

There being no objection, the privileges of the floor were extended Mr. Scott.

MR. COLEMAN (Greene)—It seems that Section 2 is rather in conflict with the provision of the Committee's report on Suffrage and Elections.

MR. LOMAX—The Committee apprehended there might be some conflict perhaps between this provision and the Suffrage Article, after it was adopted, but we thought the Committee on the Order, Consistency and Harmony of the Constitution could reconcile those questions without any trouble.

MR. COLEMAN—I hold to the view that the Committee on Harmony cannot change the sense of an enactment of the Convention. It can only harmonize—

MR. LOMAX—Inconsistent provisions.

MR. COLEMAN (Greene)—I move to strike out Section 2.

MR. LOMAX—One moment. I would like to direct the attention of the gentleman from Greene to this proposition; I presume the part of the Section he refers to is the last paragraph—

MR. COLEMAN—It reads that "all persons resident in this State, born in the United States or naturalized, or who have legally declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama." Now the Committee on Suffrage declare that it requires a two years' residence—

MR. LOMAX—Does being a citizen of Alabama necessarily give him the right to vote? He might be a citizen and still not have the right to vote, and, consequently, there would be no conflict between the section and the suffrage amendment.

MR. JONES—I would like to inquire of the chairman of the committee if a woman is not a citizen?

MR. LOMAX—Yes.

Mr. Sanford's amendment was here read as follows:

Amend Section 2 by striking out the words "those who have legally declared their intention to become citizens of the United States."

MR. SANFORD—I make that motion from the fact that whoever has declared his intention to become a citizen of the United States possesses all the rights of those that are born here, so that a man may owe allegiance to King Edward, or the Emperor of Germany, and hold the office of Chief Executive of this State, or Chief Justice of this State, or any other high and responsible office when he owes allegiance to some foreign power. When he becomes a citizen of the United States, my objection of course disappears, but until he is a citizen, he should not have the right to be the Governor of Alabama, the Chief Justice or Justice of our Supreme Court, or hold any other position in the State of Alabama, and, therefore, I move to strike out those words, where he has simply declared his intention to become a citizen of the United States. There is nothing in that section that will prevent his holding any office in the State of Alabama, unless that be stricken out.

MR. PILLANS—I entirely and heartily concur with the amendment offered, and hope the Convention will vote for it, and will call special attention to the fact, as Judge Dargan said, after the adoption of the Constitution of 1875, with that same clause in it, that the Alabama Constitution had an unconstitutional clause in it. By the powers conferred by the Federal Constitution upon the Federal Congress, it alone can create citizens out of foreign material, and we undertook to create citizens of Alabama, which Congress alone can do by the passage of uniform naturalization laws. It has done so. Its naturalization laws do not make citizens of those persons who have declared their intention to become citizens. However, in this clause, if we should adopt it, as we unwittingly did heretofore, we override the Constitution of the United States, or at least, attempt to do so, and that we ought not to do. No man should be made a citizen of Alabama who is an alien, and has not been naturalized under the uniform naturalization laws of the United States.

MR. O'NEAL (Lauderdale)—I think this section is in conflict with the provisions in reference to Suffrage and Elections.

THE PRESIDENT—The question before the Convention is the amendment proposed by the gentleman from Montgomery to Section 2.

MR. O'NEAL (Lauderdale)—I understand that, and I think the amendment of the gentleman from Montgomery should be adopted for that reason. The Committee on Suffrage gave very careful consideration to the question whether those who had de-

clared their intention to become citizens of the United States should be classed as citizens of Alabama, and after careful consideration and discussion of that subject, we omitted it from the section of suffrage, which declares "that every male citizen of this State, who is a citizen of the United States."

Now, under the old provision on suffrage and elections, found in the present Constitution, it provided "every male citizen of the State, or who had declared his intention." That is also found in the old section in reference to suffrage, and there would be a manifest conflict between these two provisions, unless the amendment suggested by the gentleman from Montgomery is adopted, and I call the attention of the chairman of the committee to the conflict and hope that he will agree to the amendment.

MR. OATES—I desire to suggest that the amendment offered by my colleague (Colonel Sanford) is not exactly in the language of the section. He uses the word "those." The words that ought to be stricken out are "or who shall have legally declared their intention to become citizens of the United States."

THE PRESIDENT—That is manifestly the intention of the gentleman.

MR. OATES—That is the intention but not the words.

MR. SANFORD—I will make it exactly in the words. I did not have the section before me.

MR. O'NEAL (Lauderdale)—Will the chairman let me call his attention to the old Constitution before he concludes his remarks? The old Constitution provides: "Every citizen of the United States and every person of foreign birth who may have legally declared his intention to become a citizen of the United States." Now we omitted that intentionally, and it seems to me there would be a conflict there.

MR. LOMAX—I submit that there is nothing in this proposed section of our bill of rights which has anything to do with the privilege of suffrage. The fact that we declare in our bill of rights that any person who shall have legally declared his intention to become a citizen of the United States, shall be a citizen of Alabama, does not and cannot confer upon that man the privilege of suffrage, and the fact that we have further declared in this section that they are citizens of Alabama, possessing equal civil and political rights, does not confer upon any person named in the section the privilege of suffrage. We make them citizens whether they have been in the State the time required for naturalization, when they have declared their intention. We confer upon them all civil and political rights, but we still retain the power and exercise the power to keep from them the privilege of suffrage. And

there is no better drawn nor better recognized distinction. It is directly and distinctly, and in terms, recognized by our own court, that suffrage is not a right but a privilege. Now the declaring that a person shall have equal political and civil rights, does not declare that he shall exercise the privilege of suffrage.

MR. PETTUS—May I ask the gentleman a question?

MR. LOMAX—Certainly.

MR. PETTUS—For information, would holding office be a political right under that section?

MR. LOMAX—No, he could not hold office under the suffrage clause, unless he was a voter I take it.

MR. JONES—I would like to ask the gentleman, is not a woman a citizen of Alabama?

MR. LOMAX—Certainly she it.

MR. JONES (Montgomery)—And a minor.

MR. LOMAX—And a minor.

MR. JONES (Montgomery)—And none of them can vote?

MR. LOMAX—None of them can vote, but they have civil and political rights in the State. Now what would be the effect of adopting the amendment of my distinguished friend from Montgomery, Mr. Sanford? The result of that would be to say to any foreign-born person who desired to come to the State of Alabama, you must live in this State for five years before you can become a citizen thereof.

The result of that would be we would exclude from coming to the State of Alabama the most desirable class of foreign citizens that come into this country and we would simply have come in amongst us people who did not care whether they had secured the rights of citizenship in one or five years.

MR. WADDELL—Will the gentleman allow a question?

MR. LOMAX—Yes.

MR. WADDELL—What does political rights mean then?

MR. LOMAX—It don't mean suffrage, and that is the question here.

MR. WADDELL—What does it mean?

MR. LOMAX—Suffrage is a privilege and not a right.

MR. O'NEAL (Lauderdale)—Will the gentleman permit a question. Under this section "any person who has legally declared



his intention to become a citizen of the United States" is declared a citizen of Alabama?

MR. LOMAX—Yes, sir.

MR. O'NEAL (Lauderdale)—Now, section 1, of the report of the Committee on Suffrage, provides that every male citizen of this State who is a citizen of the United States, shall be an elector.

Now, I ask this question; If section 1 of the ordinance submitted by the Committee on Suffrage is adopted, would not any man then who had declared his intention to become a citizen of the United States thereby being a citizen of Alabama?

MR. LOMAX—No, sir, he would not, because it is conferred upon the citizens of the United States and not upon the citizens of Alabama.

MR. O'NEAL (Lauderdale)—Oh, no, it says citizens of Alabama.

MR. PILLANS—Do I understand if a person, an alien, came to Savannah, Georgia, and resided there four years after declaring his intention, and then moved to Alabama, he could not, if these words were stricken out, at the end of five years in the United States, though not in the State, claim his citizenship?

MR. LOMAX—I hope the gentleman did not so understand me. My proposition was simply this: That by saying in our Constitution that a man could not acquire the rights of citizenship until he had been here five years, we would keep out of our State a most desirable class of emigrants; and get in those people who did not care whether the right of citizenship was conferred upon them or not, and therefore I do not think that the amendment of the gentleman from Montgomery ought to be adopted.

Now, I do not propose, and do not know that I am prepared at this time, to go into an elaborate discussion of what is meant by civil and political rights. I have not the authorities before me, but I am very sure that neither the word civil rights, or political rights have any reference to the privilege of suffrage. Consequently, the adoption of this amendment would not have any effect upon the suffrage article.

MR. HOOD—I would like to ask the delegate from Montgomery if political rights would include the right to hold office?

MR. LOMAX—No, sir; not if the suffrage article requires a person to be a legal voter, it would not.

MR. HOOD—If it does not include any political rights, or the right to hold office, what does it mean?

MR. LOMAX—I just stated that I am not in a position at this time to go into a definition of what political rights mean, but they do not mean or include the right to hold office, or the privilege of suffrage, if a right to hold office is dependent upon the persons being a legal voter within the State.

MR. BURNS—Will the gentleman allow a question?

MR. LOMAX—I will, with pleasure, if I can answer it.

MR. BURNS—Suppose a foreigner comes over here, and belongs to the Mafia or some such crowd, and comes to one of our cities, New Orleans we will say, and remain in statu quo until they perhaps elect Aldermen, or at the election of a Mayor, or some other officer in this State, and he should not become naturalized until he saw that he could get the position. You understand, suppose that was a fact; that the time he saw he was going to get a position, then he became a citizen of the United States, but at the same time he might stay here and belong to the Mafia in New Orleans, or somewhere else, and still be a subject of a foreign country. Now, do you suppose that he shall stand upon the same footing and have the same political rights as any other citizen of the United States?

MR. LOMAX—We propose to give him exactly the rights he has had for twenty-five years in Alabama and no more.

MR. BURNS—Then we will endorse that amendment.

MR. COLEMAN (Greene)—Delegates of the Convention, it seems to me this Section 2 of the Declaration of Rights is out of place in the Constitution of the State of Alabama. The Fourteenth Amendment to the Constitution of the United States protects all citizens in their privileges and immunities equally, and if these words have no meaning at all, the words "privileges and immunities" cover everything proposed to be covered or protected or made by the argument of the delegate from Montgomery, the Chairman of the committee. Now, when a question comes up that admits of so much debate, as to which there is such a contrariety of opinion has arisen upon the subject of this question, it seems to me that the Convention ought not to adopt it. In view of the fact that all citizens of the United States have equal rights, privileges and immunities in Alabama, as much as according to his own argument the words have no force, I move to lay the section on the table.

MR. LOMAX—And on that I demand the ayes and noes.

THE PRESIDENT—The pending question is on the amendment offered by the gentleman from Montgomery.

MR. COLEMAN (Greene)—I move to lay that on the table, because if my motion prevails it reaches the purpose intended by

the gentleman from Montgomery, and I move to lay the whole section on the table.

**THE PRESIDENT**—It is moved that Section 2, with the pending amendment, be laid upon the table.

**MR. LOMAX**—I ask for the ayes and noes on that proposition. It is the same provision as in the Constitution of seventy-five and in two-thirds of the Constitutions of the States of the Union.

The call for the ayes and noes was not sustained.

**MR. OATES**—I am heartily in favor of the amendment for the reasons, in addition to the reasons already given that this is exceptional in the Constitution of Alabama. Scarcely any Constitution of any State in the Union has such a provision. New York, which has a much greater number of foreigners in it than any other one, or two, or three States, has no such provision in its Constitution. This seems to have been adopted and incorporated into the Constitution made by the Convention in 1875, without ever having been fully considered. Another thing, at that time one reason for it, was that in their provisions in regard to the suffrage, those who had legally declared their intention to become citizens were allowed to vote and hence it was in harmony with that provision.

Now, sir, as we are making a Constitution, not for today, nor for tomorrow, but one perhaps for forty or fifty years, we cannot tell just exactly what will occur. Why, sir in the service that I rendered upon Committee of Investigation in the Congress of the United States in regard to the "suffrage mills" you might call them, established in New York and Boston, for the purpose of manufacturing citizens out of foreigners who had just arrived, we looked very closely into a business, which was most extensive. Evasions of the laws of the United States, processes by which, in twenty-four hours after one's arrival, if he had the money to pay for it, he would become a full-fledged citizen and have his papers duly stamped. Those people up there in those cities have had a great deal of trouble with the foreign element. We do not reject them. We welcome them to our shores. We want them to come and live among us. But we have a law of the United States, very liberal in its terms to allow them, when they arrive, to make their declaration of intention to become citizens of the United States, and within a reasonable time, five years, they can perfect their citizenship, and sir, before they do that, what is the nature of the declaration of intention? That of itself does not throw off their obligations, nor completely relieve them from their obligations of loyalty to the government from which they come. It is necessary that they be declared citizens of the United States, to take the oath when they are entirely freed from all obligations to any foreign prince or potentate, and become full-fledged citizens here. Prior

to that time there is no difficulty, as has been insinuated, because they are not declared to be citizens entitled to all the rights. Our laws, sir, protect all foreigners that come in here. They have in their rights in the ownership of property, as well as any other person, and all the rights that are extended to our citizens, and there is no just complaint on that ground. It simply postpones them according to the laws of the United States until they have thrown off their allegiance to the country from which they come and become citizens of the United States, and therefore I think it is wholly unnecessary, in view of what perhaps this Convention will do on the suffrage question, to retain this language in the Constitution.

MR. O'NEAL (Lauderdale)—Will the gentleman allow a question?

MR. OATES—Certainly.

MR. O'NEAL (Lauderdale)—Is it not a fact that this provision was not contained in any Constitution in Alabama, until after the civil war?

MR. OATES—No; and it is not contained in one Constitution in twenty of the States of the Union.

MR. O'NEAL (Lauderdale)—Is it not a fact that it is not in the Constitution of 1819, and was not incorporated in any other Constitution?

MR. OATES—Never, in any, until 1875.

MR. O'NEAL (Lauderdale)—I will ask you a further question. If making all persons who declare their intention to become citizens of the State of Alabama, would not make them electors under the first section of the suffrage provision, as reported by the committee?

MR. OATES—Well, probably not.

MR. O'NEAL (Lauderdale)—Why not?

MR. OATES—But it might give rise to confusion, and there is no necessity of retaining it as it is.

MR. O'NEAL—If they are citizens of the State of Alabama, would they not be electors, if they had resided here two years?

MR. OATES—That is what it might do, because it confers upon them all rights——

MR. O'NEAL (Lauderdale)—It says if they are citizens of Alabama——

MR. OATES—But I think the court, considering the whole instrument, together, he would not be held to be entitled to the

rights of suffrage under the report of the committee, but as there is no use for this language, and it does not impair the rights of the people when they are not electors, it ought not to be retained, and I am in favor of the amendment.

MR. SORRELL—I move the previous question on the amendment of the gentleman from Montgomery and the section.

MR. PETTUS—I will ask the gentleman to withdraw it.

MR. SANFORD—I hope the amendment suggested will be adopted. We know that all the questions——

THE PRESIDENT—The gentleman from Tallapoosa has moved the previous question upon the section and the amendment.

The main question was ordered.

MR. SANFORD—Now, Mr. President, of all the questions that have disturbed Christendom, that of citizenship has been the most universal——

THE PRESIDENT—The chair will state to the gentleman from Montgomery that the previous question has been ordered.

MR. O'NEAL—I rise to a point of order. The gentleman introduced the amendment, and has the right to conclude the argument, even after the previous question is ordered.

MR. SANFORD—It has always been done——

THE PRESIDENT—The previous question has been ordered upon the proposed amendment and the section proposed by the committee, and the gentleman from Montgomery (Mr. Lomax) chairman of the committee, has the right to conclude, unless he yields to the gentleman.

MR. LOMAX—I do not care to say anything.

MR. SANFORD (Montgomery)—As I remarked, you remember, and this Convention remembers, that in 1850 or '51, Coster, an Austrian citizen, had declared his intention to become a citizen of the United States, or had become one. He was in the East. One of the Austrian vessels seized him as a citizen of Austria, and then it was that Lieutenant Ingram told them unless they released him that he would blow their ships out of the water. I mention that incident to show that the fact that a man may declare his intention does not make him a citizen. There was a long controversy between Chevalier Houselman and Mr. Webster, then Secretary of State, upon the subject. We remember also until since the war in Alabama, no man who was not a naturalized citizen could hold real estate in this commonwealth.

MR. OATES—Allow me to call your attention to another fact, that this provision which gives full citizenship to those who have legally declared their intention, has given rise to controversies between this Government and foreign Governments about the relations they hold to it.

MR. SANFORD—Time and again, until many Germans are afraid to go to Germany today, where they have simply declared their intention, unless they be seized and placed in the army.

So I say they are not citizens of this country. They are citizens of their native places, and you know that as a general principle nothing reverts so soon to its original condition as citizenship, and, therefore, it has been the cause of much negotiation and some hostile feelings between the different nations. Why should a man who is not a citizen of Alabama, or, rather, of the United States, enjoy the rights and privileges which only citizens enjoy? Citizenship is a high privilege. It is a great distinction to be an American citizen. He becomes a sovereign power in this land when he is a citizen, and why we should seek to confer the great rights upon men who owe their allegiance to Turkey, to China, to England, to France, Belgium and all the foreign countries, and put them upon an equality with our own native born and naturalized citizens. I am at a loss to know.

The fact that it never existed in this State until within the last twenty-five years is a good reason for recurring to the former basis. Therefore, I hope that the amendment will prevail.

MR. COLEMAN (Greene)—I hope that the gentleman will withdraw his motion for the previous question.

MR. PETTUS—I rise to a point of order.

MR. HEFLIN (Chambers)—I make the point of order that the previous question has been ordered.

THE PRESIDENT—The previous question has been ordered. It can only be taken up on a motion to reconsider.

MR. O'NEAL (Lauderdale)—Can that be taken up now? A motion to reconsider?

THE PRESIDENT—It might, by a suspension of the rules.

MR. O'NEAL (Lauderdale)—I move that the rules be suspended, and that the Convention reconsider the vote by which the previous question was ordered on this Section.

Upon a vote being taken the rules were suspended.

THE PRESIDENT—The question is on the motion to reconsider the vote whereby the previous question was ordered on Section 2 of the Article, and the pending amendments.

MR. LOMAX—A parliamentary inquiry. Can you reconsider a motion ordering the previous question?

MR. PETTUS—I will ask the gentleman from Greene if he will yield to me to offer a substitute for the amendment offered by the gentleman from Montgomery.

MR. COLEMAN—If I am to have the floor in the morning.

The amendment was read as follows:

Amend by striking out the words "and political" in line three of Section 2, Article I.

MR. COLEMAN—Whatever may be the final determination as to the meaning of those words, it is very clear some courts hold that "political privilege" does include the right of franchise. I have a decision of the Supreme Court of California in my hands, holding exactly that view. "As was well said by Judge Mills of the Court of Appeals of Kentucky, 'the mistake on the subject arises from not attending to a sensible distinction between political and civil rights. The latter constitute the citizen while the former are not necessary ingredients. A state may deny all her political rights to an individual and yet he may be a citizen.'" and it goes on and holds that political rights include the right of suffrage. And to the same effect you will find another decision in Harris' Reports, in the body of the decision. I do not want the Convention to act hastily in this matter, because the law is uncertain. It is not settled in this State that I know of—

MR. LOMAX—Will the gentleman from Greene permit me to ask a question.

MR. COLEMAN (Greene)—Yes.

MR. LOMAX—Has he ever examined the case of Washington against the State in the 75th Alabama?

MR. COLEMAN (Greene)—Yes.

MR. LOMAX—Does not that case hold that voting is not a right but a privilege?

MR. COLEMAN (Greene)—Voting is a privilege. There is no doubt about it. And there will be found a much abler decision by Judge Stone in the 73d Alabama, page 26, the State against Green, where all these questions are discussed. But as I stated before, when I was upon the floor, there is no necessity whatever for Section 2 in our Bill of Rights. If the Convention thinks proper, however, to retain any part of Section 2, then we should eliminate from it all objectionable features whatever. Both the one suggested by my friend, the delegate from Montgomery, General Sanford, and also by the amendment of the gentleman from Lime-stone.

MR. COBB—We are about to adjourn. Will the gentleman yield to me to make a motion to reconsider the action on your motion, or will you do it?

MR. COLEMAN (Greene)—It has been reconsidered.

THE PRESIDENT—Will the gentleman from Greene suspend.

The hour of 6 having arrived, the Convention adjourned until tomorrow morning.

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## THIRTY-EIGHTH DAY

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MONTGOMERY, ALA.,

Saturday, July 6, 1901.

The Convention met pursuant to adjournment, was called to order by the president, and the proceedings opened with prayer by the Rev. Mr. Patterson as follows:

O Lord, our Heavenly Father, we once more come into Thy presence and as we come we acknowledge that we are Thy creatures. That in Thee we live and move and have our being, and that without Thee we can do nothing. We are grateful unto Thee that Thou hast revealed Thyself as the source of all wisdom, and as willing to impart that wisdom unto those who come humbly unto Thee and ask for it, and we pray that Thou wilt make good unto Thy servants here today all of Thy promises, and that Thou wilt grant them that wisdom that cometh down from above. We pray that Thou wilt look upon us with Thy mercy and loving care. Pardon our sins and grant we may be led by Thy holy spirit in the pathways of righteousness, and that our lots may be cast in the pleasant places. Be with us during the hours of this day, strengthen us for every duty. Guide us in every undertaking, and at last when Thou has served Thy will with us here upon earth, receive us and own us as Thine in Heaven, and to Thy name, Father, Son and ever blessed Spirit, shall be the praise, world without end. Amen.

Upon the call of the roll of delegates 111 responded to their names.

Leave of absence was granted to Mr. Searcy of Tuscaloosa for today.

MR. WADDELL—I have a resolution which I wish to have unanimous consent to introduce, and I will ask a suspension of the rules and that the resolution be put upon its passage.



The resolution was read as follows:

"Resolved, That this Convention remain in session until 2 o'clock p. m. today, and that it then adjourn until Monday."

MR. WADDELL—I move a suspension of the rules.

Upon a vote being taken the rules were suspended.

MR. SANFORD—I move to amend by inserting 12 o'clock Monday instead of 9:30, so there may be a quorum present.

MR. O'NEAL (Lauderdale)—I move to lay the amendment on the table.

Upon a vote being taken the motion to table was carried. And upon a further vote the resolution, as read, was adopted.

MR. MERRILL—I have a resolution.

Ordinance No. 412, by Mr. Merrill:

An ordinance relating to the bonded indebtedness of the State—

Be it ordained by the people of the State of Alabama in convention assembled:

That an act of the General Assembly of Alabama, entitled "An act to consolidate and adjust the bonded debt of the State of Alabama," approved February 18, 1895, and an act amendatory thereto, entitled "an act to amend Section 6 of an act to consolidate and adjust the bonded debt of the State of Alabama," approved February 16, 1895, which said last named act was approved February 16, 1899. Be and the same are hereby made valid. The Governor is authorized and empowered to act under the same and carry out all the provisions thereof.

Referred to the Committee on Amending Constitution and Miscellaneous Provisions.

MR. O'NEAL—I have a resolution.

Resolution No. 226, by Mr. O'Neal of Lauderdale:

Whereas, This Convention has shown its ability to limit the debate, taxes and municipal indebtedness, but seems utterly powerless to limit the heat, and

Whereas, There seems to be a strong limitation upon the prospects of this Convention reaching the snowy summits of Monte Sano and

Whereas, we must remain for a time beyond which the memory of man runneth not to the contrary, in this hot but classic hall, therefore be it

Resolved, That the Sergeant at Arms be instructed to place two additional fans in this hall.

Referred to the Committee on Schedule, Printing and Incidental Expenses.

MR. WHITE—I would like to amend that by knocking out the preamble and putting in two more fans.

MR. O'NEAL (Lauderdale)—I would accept the amendment.

"Resolution No. 227 by Mr. Sentell: "Resolved, That the rule of this Convention as embodied in resolution No. 184, be amended so as to read as follows: That from and after the passage of this resolution, no per diem will be allowed to the delegates of this Convention who are absent, except those granted leave of absence on account of the sickness of themselves or members of their family, or other good cause."

Referred to Committee on Rules.

MR. SPRAGINS—I have a petition which I ask to be read and referred to the Committee on Schedule and Printing.

The petition was read as follows:

Huntsville, Ala., June 21, 1901.

To the Alabama Constitutional Convention, Montgomery, Ala.:

In order to procure individual protection and to give to us and our families a wage that will maintain us, we have voluntarily entered into an organization known as the Huntsville Typographical Union, No. 422. We have at heart the interests of similar unions throughout the country, and we believe that organized labor should be recognized in every section of the Nation. Therefore be it

Resolved, That Huntsville Typographical Union, No. 422, hereby memorializes the delegates composing the Alabama Constitutional Convention to give preference to the union printing establishments when consistent with the duties and obligations in the exalted and distinguished capacity in which they have been called to serve the people of Alabama.

Adopted this the 29th day of June, 1901

H. L. Pollard, President.

Geo. C. Patterson, Secretary.

Resolution No. 228, by Mr. White:

Resolved, That the President of this Convention appoint a committee of five whose duty it shall be to see that all articles

adopted by this Convention are properly engrossed. Said committee to be known as The Committee on Engrossment.

Referred to the Committee on Rules.

Resolution No. 229, by Mr. White:

Resolved, That when any article has been adopted, 300 copies thereof shall be printed for the use of the members of this Convention.

Referred to the Committee on Rules.

MR. HARRISON—When my name was called I did not have this resolution ready, and I ask unanimous consent to offer it now.

The resolution was read as follows:

Resolution No. 230 by Mr. Harrison:

Resolved, That the Secretary of this Convention be, and is hereby instructed to deposit a copy of the stenographic report of the Convention in the libraries of the following institutions in this State, to wit: One at the University of Alabama; one at the Alabama Polytechnic Institute; one at the Southern University; one at Howard College; one at Spring Hill College and one at the Normal College at Florence.

MR. O'NEAL (Lauderdale)—I ask permission to add the Normal School at Florence.

MR. GRAHAM—I ask permission to add the Alabama Girls' Industrial School at Montevallo.

MR. PETTUS—I rise to a point of order. The resolution is not before the House for amendment at this time.

MR. O'NEAL—I did not make a motion to amend.

The resolution was referred to the Committee on Rules.

Upon the call of the standing committees, the Committee on Exemptions submitted their report and the accompanying ordinance, which was read as follows:

Reports of the Committee on Exemptions:

Mr. President:

I am instructed by the Committee on Exemptions to make the following report:

The Committee considered carefully all ordinances and resolutions submitted to it, several of which contain valuable suggestions, but the Committee has deemed it best not to make any change in the Article on Exemptions in the present Constitution,

and direct me to report said Article to be incorporated in the new Constitution.

All ordinances and resolutions referred to the Committee are herewith returned.

A. C. Howze, Chairman.

## ARTICLE — .

### Exempted Property.

Section 1. The personal property of any resident of this State to the value of \$1,000, to be selected by such resident shall be exempted from sale on execution, or other process of any court, issued for the collection of any debt contracted since the 13th day of July, 1868 or after the ratification of this Constitution.

Sec. 2. Every homestead, not exceeding 18 acres, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any city, town or village, or in lieu thereof, at the option of the owner, any lot in a city, town or village, with the dwelling and appurtenances thereon owned and occupied by any resident of this State, and not exceeding the value of \$2,000 shall be exempt from sale on execution or any other process from a court for any debt contracted since the 13th day July 1868, or after the ratification of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage, or other alienation of said homestead by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife to the same.

Sec. 3. The homestead of the family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted since the 13th day of July 1868, or after the ratification of this Constitution, in all cases, during the minority of the children.

Sec. 4. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanics lien for work done on the premises.

Sec. 5. If the owner of a homestead die, leaving a widow, but no children, such homestead shall be exempt, and the rents and profits thereof shall inure to her benefit.

Sec. 6. The real or personal property of any female in this State, acquired before marriage, and all property, real or personal, to which she may afterwards be entitled by gift, grant, inheritance or devise, shall be and remain the separate estate and property of such female, and shall not be liable for any debts, ob-

lizations, and engagements of her husband, and may be devised or bequeathed by her, the same as if she was a feme sole.

Sec. 7. The right of exemption hereinbefore secured, may be waived by an instrument in writing, and when such waiver relates to realty, the instrument must be signed by both the husband and the wife and attested by one witness.

MR. HOWZE—I move that the report be printed, together with the accompanying ordinance.

The motion was carried.

THE PRESIDENT—The next order of business will be the special order which is the consideration of the report of the Committee on Preamble and Declaration of Rights. The matter before the Convention is section two of the Article reported by the Committee to which is pending an amendment by the gentleman from Montgomery, and an amendment to the amendment offered by the gentleman from Limestone.

Is the Convention ready for the question on the amendment to the amendment?

MR. LOMAX—I believe at the adjournment of the Convention last evening the gentleman from Greene had the floor. If the gentleman from Greene will yield to me, I think perhaps we can settle this matter without further controversy. I ask the unanimous consent of the Convention to make a statement, however, prior to stating what the action of the Committee will be upon this matter. I will say that the statement will probably cut off debate, and settle the matter in controversy between us, and I ask leave to make that statement.

THE PRESIDENT—The Chairman of the Committee on Preamble and Declaration of Rights asks unanimous consent to make a statement explanatory of the position taken by the Committee.

To which there was no objection.

MR. LOMAX—Now, Mr. President, on yesterday, I think it is due to myself and to the Convention, I should state that having fully satisfied myself from the decisions of the Supreme Court of Alabama, notably the case of Washington against the State, in the Seventy-fifth Alabama, that the words "political rights," in this section had no bearing upon the question of suffrage whatever, I had not taken the trouble to investigate the question of political rights in such a way as to be able, off hand, to give a definition of the words "political rights," not believing that the question could possibly arise in connection with any matter of suffrage before this Convention. I am still, from a further investigation of

the authorities, convinced that if those words "political rights" might remain in this section, and that it would have no bearing upon any suffrage proposition which might be adopted by us, and I am sustained in that position, not only by the Supreme Court of Alabama, but in my judgment by the Supreme Court of the United States, and by the meagre definitions which I find in the law books of the term "political rights;" but the Committee is not disposed to have any great pride of opinion as to this particular matter. We do not desire to get up a heated discussion about the meaning of words in the declaration of rights. We believe that everything in that particular section of the bill of rights is covered already by the Fourteenth Amendment and we could not change or alter it if we undertook to do so.

We are not informed of the reasons why the Convention of 1875 adopted the bill of rights with this section in it without a dissenting vote, as the journal of that Convention show. But, entertaining the opinions which I have expressed, that the striking out of the words political rights, or the striking out of the words "any person who has legally declared his intention to become a citizen of the United States" are not material to be declared in the declaration of rights, the Committee are willing and ask the unanimous consent of this Convention to accept the amendments, and I will state, Mr. President, that when this Convention has granted its consent to accept the amendments, I shall on my own responsibility, move to strike out the entire section.

MR. BEDDOW—I would like to ask the Chairman of the Committee a question. What effect would the striking out of those words, as proposed by the amendment, have on those citizens of the State who have declared their intention, and who have been voting in the last few elections?

MR. LOMAX—I do not think it will have any effect, provided they have the right to vote under the suffrage article adopted by this convention.

THE PRESIDENT—Is the Convention ready for the question on the amendment offered by the gentleman from Limestone?

MR. COLEMAN (Greene)—I understood the Chairman to say he is willing to accept both amendments, and I think unanimous leave will be granted.

MR. LOMAX—We will accept both of them, by the consent of the Convention.

THE PRESIDENT—Does the gentleman ask unanimous consent?

MR. LOMAX—Yes, sir.

To which objection was made.

MR. LOMAX—As the Convention refused to grant unanimous consent, I move that the section and the amendments be laid on the table.

MR. PILLANS—Will the gentleman allow me to call his attention to one thing that may be material to be considered before that is done. Will he withdraw?

MR. LOMAX—Yes.

MR. PILLANS—It is simply this, the section as we find it in our last Code of this State, has appended to it a note, stating "the effect of this section is to place all persons natural and artificial on a basis of equality in the courts." Citing the case of South and North Railroad against Morris, 65th, 75th, 85th, 87th and 106th Alabama, etc., and see also citations to another section: "there can be no discriminative advantage bestowed by law between the parties to the same suit," citing other authorities. "The statute against miscegenation is not a denial of equal civil and political rights to the races." Now if it appear from that, very likely that is a clause that has some efficacy and meaning, and has force in protecting investments and corporate rights and perhaps individual rights in this State, against hasty and ill advised legislation.

MR. WALKER—Will the gentleman allow a suggestion?

MR. PILLANS—Yes.

MR. WALKER—Isn't that purpose completely effected by the provision of the Fourteenth Amendment to the Constitution of the United States.

MR. PILLANS—It is, possibly. I only wanted to say that I expect to vote against laying the section on the table for the reason that it can be amended and preserved.

MR. LOWE (Jefferson)—I desire to state the grounds of my objection, and why I declined to agree to unanimous consent upon this question. It merely grows out my indisposition to mutilate our old constitution more than is necessary. I doubt if any gentleman on the floor has suggested a single instance or particular, in which any harm has come from the declaration contained in the old constitution. To my mind I can find no good reason for changing that language, or modifying it in any respect. Therefore, acting upon the principle, and upon the belief, that unless a necessity exists for a change we should adopt not only the spirit, but the letter of the old Constitution, I hope that the amendment will be voted down, and that the report of the Committee will be adopted.

MR. LOMAX—In reply to the suggestion of the gentleman from Mobile, I will state that an investigation which I made last night demonstrated the fact that this provision is not contained

in any Constitutions at all, in the language in which it appears in our Constitution. It appears substantially in the following Constitutions: New York, Connecticut, Indiana, Minnesota, South Carolina and Virginia, and does not appear in the Constitution of any other State, except those named, and, as I say, it does not appear in this language in those Constitutions. I have no doubt, however, that everything contained in that section is covered by the Fourteenth Amendment, as I said before, and we could not possibly alter it if we undertook to do so. I think the section ought to stand as it is written, and as it was adopted unanimously by the convention of 1875, or else it ought to go out altogether, and therefore I renew my motion to table both the amendments and the section.

MR. PETTUS—I would like to ask the gentleman a question. If you strike out Section Two, will there appear any where in the Constitution of Alabama a section declaring who are citizens of the State of Alabama?

MR. LOMAX—There will not appear in the bill of rights any statement of that sort. I do not know what the subsequent committees may do. It is not necessary in any event. I now renew my motion to table.

Upon a vote being taken a division was called for, and by a vote of 49 ayes to 42 noes the section and the amendments were laid upon the table.

THE PRESIDENT—The Secretary will read the next section.

The Clerk read Section Three as follows:

Sec. 3.—That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable right to change their form of government in such manner as they may deem expedient.

MR. LOMAX—Mr. President, I will state that section is in the precise language of Section 3 of the Declaration of rights in the Constitution of 1875, and I move its adoption.

Upon a vote being taken the section was adopted.

Section Four read as follows:

Sec. 4.—That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship; nor pay any tithes, taxes or other rate for the building, or repairing of any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust,



under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

MR. LOMAX—I move the adoption of that section.

Upon a vote being taken the section was adopted.

Section Five was read as follows:

Sec. 5.—No law shall ever be passed to curtail or restrain the liberty of speech or of the press; and, any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

MR. LOMAX—I ask leave to make a verbal correction in that section, by inserting the word “that” in the beginning of the section, so as to make it read “that no law.”

There being no objection, the amendment was allowed.

MR. LOMAX—I will state that the committee has amended that section or added to the section in the Constitution of 1875, the first clause of the present section “that no law shall ever be passed to curtail or restrain the liberty of speech or of the press.” Those words have been added by the committee. The original section reads in the present Constitution. “Any person may speak, write or publish his sentiments on all subjects, being responsible for the abuse of that liberty.” I move the adoption of that section as read.

MR. ASHCRAFT—I would like to ask the chairman of the committee. It seems in the original it was “any citizens” may speak. What was the design of the committee in changing the word “citizen” to the word “person”?

MR. LOMAX — There was no special design at all, but I should think that the right to speak and publish his sentiments ought to be enjoyed by everybody, whether he is a citizen or not.

MR. ASHCRAFT—I ask for information. There must have been some design in the original framers, for limiting it to the citizens as distinguished from a person. We might have an alien in an alien undertaking to stir up sedition and strife, and it might be possible in the interest of the country to prevent aliens from speaking and writing.

MR. LOMAX—I will state to the gentleman from Lauderdale in the event of such a thing as that taking place, as an alien may undertaking to stir up sedition, he would be chargeable with and liable to be convicted of treason.

MR. BOONE—Was not the purpose of the committee to allow the women of the State the right to express their views, also?

MR. LOMAX—Women are citizens any how, but every person within the commonwealth ought to be permitted to write, speak and publish his sentiments whether he be a citizen of the commonwealth or not, and be responsible for the abuse of that liberty as every one else is.

MR. CUNNINGHAM — What would be the status of an alien? Could he be indicted and tried for treason?

MR. LOMAX—No, sir, but he could be tried for something else that would be equally as bad.

Upon a vote being taken the section was adopted.

Section Six was then read as follows:

Sec. 6. — That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and that no warrant shall issue to search any place or to seize any person or thing without probable cause, support by oath or affirmation.

MR. LOMAX—I move the adoption of that section.

MR. DUKE—I would like to ask the chairman a question. What was the object of changing the word home to house?

MR. LOMAX—To correct a misprint in that copy you have in your hand. The word in the Constitution was house, and in printing that particular copy it was printed home.

Upon a vote being taken the section was adopted.

Section Seven was read as follows:

Sec. 7.—That in all criminal prosecutions, the accused shall have a right to be heard by himself and counsel, or either; for either; to demand the nature and cause of the accusation; to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf if he elects so to do, and in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and that he shall not be compelled to give evidence against himself, nor be deprived of life, liberty or property, but by due process of law, but the General Assembly may, by a general law, provide a change of venue for the defendant in all prosecutions by indictment, and that such change of venue on application of the defendant, may be heard and determined without the personal presence of the defendant so applying therefor.

The minority report thereon was then read as follows:

The undersigned, member of the Committee on Preamble and Declaration of Rights, concurs in the majority of said report save as to portions of Section 7, and he offers as an amendment to portions of Section 7, the following:

And in all prosecutions by indictment the place in the county or district in which the crime was committed shall be stated with reasonable certainty as to enable the defendant to know the particular place where the criminal act is alleged to have been committed.

J. H. Barefield.

MR. BAREFIELD—I ask unanimous consent to amend the minority report.

The amendment was read as follows:

Amend minority report, Section 7, by inserting after the word "indictment" the words "time and."

THE PRESIDENT — So as to read time and place. The question will be upon the adoption of the minority report.

MR. HEFLIN (Chambers)—I move its adoption.

MR. BAREFIELD—I do not care to take up much of the time of the Convention on a proposition that it seems to me ought to be in the organic law of this State. It has been argued by some, Mr. President, that the minority report is a question that can be handled by the Legislature. I admit that, gentlemen of the Convention, and will go further and say that the question of the indictment is a question that can be left to the Legislature of the State of Alabama. We have, Mr. President, a defendant brought before the bar of justice in the various courts of Alabama, and he comes in with an indictment against him that reads as follows: The Grand Jurors of said county charge that before the finding of this indictment, A. B. carried a pistol concealed about his person. We all know that the question of selling liquor and the question of carrying concealed weapons is one of the hardest of all offenses for a defendant to defend in a court of law. When he is charged with selling liquor or with carrying concealed weapons, he is not put on any notice whatever as to what he is expected to defend when he comes into court. He goes into court charged with violating the laws of Alabama, and he does not know the nature of the offense, he does not know the place where this alleged offense occurred. Now, Mr. President, in justice to a defendant, he ought, at least, to know what he is expected to defend, so that he may be able, Mr. President and gentlemen of this Convention, to summon his witnesses and to prove, if possible, that he is not guilty of the alleged offense.

Now, Mr. President, it has been argued by the gentlemen composing the committee on the Declaration of Rights that it opened wide the doors to perjury, but I say that if this Convention inserts this as a guarantee to a defendant, you had better open the doors to perjury rather than to have one innocent man convicted under the laws of Alabama. It is a known fact, Mr. President and gentlemen of this Convention, that men who lack the backbone to confront a man that he does not like, or a man that has done him a wrong, and the natural result is that he concocts a plan, he gets his witnesses and goes into court, and perjures himself and thereby causes the downfall of possibly an innocent man, and yet, gentlemen of the Convention, the majority of the committee says that that man shall not be put on notice as to what he is expected to prove or to defend. Let us see the other side. The State of Alabama brings an ejectment suit against a man. The complaint is filed and served upon the defendant. He is put on notice as to what he is expected to defend against. Why should the State not be so generous as to criminals? I say, Mr. President, that if this is inserted, that many a man who is innocent of any offense will have the right and the privilege of summoning witnesses that will prove to the courts that he is innocent.

Now, let us take another proposition, gentlemen of the Convention, and I dare say there is not a practicing lawyer in this Convention who has not gone up against the same proposition. A man is charged with an offense, and when he gets into court he has possibly one or two absent witnesses. He is forced to a trial by being put on a showing. He makes his showing, and he submits it to the solicitor, who accepts it. In that showing it contains a statement of one time and place, and the solicitor, gentlemen of the Convention, will prove another time and another place. What is the result? There is a man that stands before the bar of justice without a single witness to speak in his behalf, and the result is he gets upon the stand to speak in his own behalf, and the law says that his testimony shall be weighed in the light of the interest he has in the result of the trial.

I say gentlemen, that it is an injustice to force a man to go into court, and not allow him to know what he is expected to defend.

MR. SMITH (Mobile)—Upon theory it looks as if there were merit in the minority report, but any lawyer who has had experience in the criminal courts for any considerable length of time knows that to put that section in there will be a stumbling block to the prosecution in at least two-thirds of the cases. I am now interested in the criminal practice. I have had no connection with that practice since 1893, but prior to that time I was in the criminal court, I believe, almost every day that it was open. I was the representative of a number of defendants, but never prosecuted

a man in my life, and I unhesitatingly say that if that law had been in effect I should, regardless of every other question of evidence, have been able to have acquitted at least 50 per cent. of the men I defended, upon that and that alone. It matters not what question arises, there will be a divergency between witnesses as to minute particulars. There will be a divergency between the witnesses especially as to a question of time, and although the testimony may satisfy those that hear it that each witness is really speaking in regard to the same occasion, yet when you come to fasten their testimony upon the particular time, there will be such a divergency that the testimony will not be considered. Now, when the question is before the Grand Jury there are several witnesses, and those several witnesses testify substantially to the same transaction, but they do differ in the detail as to the particular circumstances, or the particular place, or the particular time. Under this rule the Grand Jury must locate upon that hearing, the particular time. After the Grand Jury has heard the case, found the indictment, and the man is put upon trial, the several witnesses get together, under the rule or not, and discuss the matter, and the man upon whose testimony the particular time has been fixed is convinced by the other witnesses that he is in error as to that particular instance, or that particular minute, and upon the trial the case is thrown out. Now, in defending, while there have been a few cases of innocent men tried where it was impossible for me to locate the particular time and place of the charge, those instances were so very very few that I do not now recall a single one that occurred during my practice. Certainly where that was the case, there was not sufficient evidence of the substantive facts to get a conviction. I certainly never represented a man that was convicted of a crime, the time and place and circumstances of which he did not know in advance. Once or twice, as I said before, I have defended men who did not know exactly what they were charged with, but the result always was that the witnesses did not know either and the man was readily acquitted, without more than the form of a trial.

I believe therefore, that while the rule as here laid down is apparently reasonable in practice, it will tend to defeat justice and enable more men to be cleared upon technicalities than already avoid the law upon such grounds, and my experience is that there is now an abundance of those who are guilty, and know they are guilty, that avoid conviction upon technicalities, which serves no good purpose to the State?

MR. WILSON (Washington)—The reason for alleging the time and place in any prosecution, criminal or civil, grew up centuries ago. Sprung up when the juries were selected from a particular vicinity out of which the litigation came under the idea that the men from that community knew more about it than anybody else, and they were selected not to try the case on the evi-

dence impartially, but to try it from their personal knowledge of the facts, hence the necessity for alleging the place. It was essential to allege the time in order to enable the sheriff to select jurors, who were in the community at the time that the litigation sprung up. Mr. President, that reason has ceased to be for over 300 years. In addition to this, Mr. President, coming down to the present day, why should a defendant be served with a notice of the exact time and place of the commission of the alleged offense? It is said in indictments for carrying concealed weapons that the State may simply allege one carrying and may prove another, but as said by the gentleman from Mobile, a case of that kind will not arise in one case out of a thousand. Mr. President, the solicitor is as often put on a showing as the defendant, and when once the solicitor is placed on a showing, that showing is as binding on the State's witnesses as it is on that of the defendant. To adopt this provision means in substance and of necessity, carries with it the requirement that the State shall furnish the defendant an abstract of the evidence it proposes to use upon the trial. It opens the gates of fraud, and makes it almost impossible to ever get a conviction, it is a slap in the face of fair trial, it clogs justice, it retards law and order, and, Mr. President, the provision carries on its face a license to crime and a premium on perjury. Where is the defendant, if you will tell him the identical time and place where he engaged in a game of cards—I will ask the gentleman how many convictions there will be for card playing in this State, I will ask the gentleman how many of these gambling dens in Montgomery or any other place could be reached if you come up and cite them the time and place and the very night. How many of them cannot get up and prove that it was some other night, and there goes your case. Mr. President, I have seen a good many glass bottles, whiskey bottles and such truck as that turn men loose, that everybody knew were guilty of carrying concealed weapons. I have had men walk up to me and tell me right in the face of court that the defendant is guilty, but you cannot prove it, and if you do I am prepared to prove that he was somewhere else, and I have seen it several times wind up by the threat being verified. It is too often the case as the matter now stands, and if you engraft this provision in the Constitution there won't be one conviction out of ten indictments.

MR. BAREFIELD — I would like to ask the gentleman a question.

THE PRESIDENT—Will the gentleman consent to be interrupted?

MR. WILSON—Certainly.

MR. BAREFIELD—I would ask the gentleman if I withdraw the word "time" will you support the word "place"?

MR. WILSON—No sir; one is bad as the other, an alibi is as easily proved against the place as against the time. Mr. President, I hope that this Convention will not place any such license on crime in violations of law, as proposed by this minority report.

MR. BAREFIELD—I ask unanimous consent to withdraw the amendment as to time.

THE PRESIDENT—The gentleman desires to withdraw the amendment; is there objection?

MR. HOWZE—Yes; I object.

MR. WILLIAMS (Marengo)—I trust my friend will leave the word "time" in there for a short while, any how, to get the sense of the Convention, there may be a good many of us who like the word "time" in there, and let us get the sense of the Convention before we decide if we cannot get a whole loaf, let's get a part of it.

I dislike to differ from my distinguished friend, the solicitor from the county of Washington, and I would say in differing from him that I look at this matter entirely from the opposite side. My friend has argued here as if he were in the trial of a criminal case, and as if there were only one side to this question. I will admit that there are possibly too many safeguards thrown around one charged with the commission of a criminal act, but I submit that the English-speaking people desire safeguards thrown around those who are charged with the commission of criminal acts, and if you gentlemen talk about opening the doors to bribery and perjury it is better to have them thrown wide open than that the doors of the penitentiary be closed upon too many innocent men as in my opinion they have been in the past. Now the argument of those who oppose this amendment is upon the grounds that the solicitor or Grand Jury practically the solicitor, would have a hard time in determining the time and place at which the offense was committed. I submit to the Convention that when the matter is before the Grand Jury that the Grand Jury has before them the State's witnesses and the State's witnesses are the ones who saw the thing done. Now what is the most natural result? The question that follows? When did you see it done, where did you see it done? I submit to the Convention that on the trial of every criminal case that you have heard, the first question asked by the Solicitor is: Where was this offense committed? Some of them say in the county of Montgomery, why not have it say in the city of Montgomery, if it happened at Jack's Mill, why not say at Jack's Mill? At what time? Why, last week. My understanding of the amendment is that the time must be charged with reasonable certainty. Is there anything unreasonable about saying on or about the 15th of June, near Jack's Mill over here in Lowndes county, near Hayneville? There is a murder down here near the Federal

building. Say near the Federal building, or at the intersection of two streets, or at King's Cross Roads, and describe it with some degree of accuracy. As it is now, you have the whole county of Montgomery, the whole county of Walker, or of Jefferson, and you have twelve months, and as to a felony, you have three years in which to say when the felony happened, and in civil cases the place and time to be fixed. The best illustration of the case are numerous railroad. They say you must fix the time and place with reasonable certainty, where the particular injury complained of happened. Let us have it so in the criminal courts. The worst illustration that my friend could have presented is this question of carrying a pistol, but let us take up the question of carrying concealed weapons.

MR. REESE—Did you ever know of a case of indictment for murder where any injustice was done by failure to allege the place where the man was murdered?

MR. WILLIAMS—Oh, no; I did not mean to say that I can recall a particular case. Not in a murder case, but certainly the State's witnesses know the time and place and why not give the defendant notice of the time and place charged at the time the indictment is brought. Gentlemen on the opposite side will say when witnesses come into court, where did it happen? Down at the cross roads. Won't it fix the place? And when they say, when did it happen? On the 20th of June. That fixes the time, it is true. The defendant will have to send out and get his witnesses, when possible he came into court prepared for a different defense at a different time. They might say if a fellow is so bad, going around committing offenses at different times, he ought to be convicted, but that is not the policy of our law, prosecute him for the one offense or the other, but put him on notice of the time and place.

MR. WILSON (Washington)—Is it not the custom to prove the time and place more definitely than to say a particular county and within one year before the finding of the indictment?

MR. WILLIAMS—It is ordinarily done, and that is what I condemn. In the trial of a case where the time and place is brought to the defendant, he has not time to go out and get witnesses. Take the gambling cases in Montgomery mentioned by the gentleman from Washington. If anybody sees gambling going on down town, he knows between what two streets, on Commerce or Dexter, or which side of Dexter he saw it. He certainly ought to know with that much particularity and whether last week or last month, and not place the defendant within a limit of twelve months, and give him the whole limit of Montgomery County. I am in favor of having the time and place, and if we cannot have both, let us have the place by striking out the time.



MR. DUKE—For the life of me, I cannot see any good reason why this amendment should not be adopted. I cannot see, Mr. President, why it is that a man on trial for a criminal offense should not have the same right and have the same information given him in the indictment that he would be entitled to if he was defending an action on a contract or any other kind of civil action. A man who is on trial in which his life or his liberty may be taken from him, tell me, Mr. President, that he should not have the right to know the time and the place at which he is charged with the commission of an offense? Some of the gentlemen, and I was surprised at my distinguished friend from Mobile, say it will prove a stumbling block in the way of the administration of the law, if you will let the defendant know the time and the place of the offense that he is charged with committing. In other words, Mr. President, if you will let the defendant know what you are prosecuting him about, you cannot convict him, because he can get up his evidence. Has it come to this in this country, that lawyers will argue that we have to slip up on these defendants in order to convict them? How is he going to know except from this indictment? You have the indictment. The grand jury of said county charged that before the finding of this indictment, that John Jones sold spirituous, vinous or malt liquors without a license and contrary to law. That is a good indictment under the present law. He goes to his attorney and employs him. He tells his attorney, I never sold a drop of liquor contrary to law in my life. His attorney says, well, where is your evidence? He says, Well, I don't know—I don't know the time that he alleges; I don't know the place; I don't know anybody that can swear that. His attorney says, Yes, but somebody has sworn it; somebody has gone before the grand jury and testified that you are guilty of this offense. Then what is the man going to do? He is innocent and he goes on trial. The indictment is read and the witness is put upon the stand and testifies that at a certain time and certain place he did sell spirituous, vinous or malt liquors without a license. Then what is he to do?

MR. PROCTOR—I would like to ask the gentleman a question.

THE PRESIDENT—Will the gentleman consent to be interrupted for the purpose of being asked a question?

MR. DUKE—Certainly.

MR. PROCTOR—I would like to ask the gentleman how he is going to manage—to allege the time and place in crimes which are 'continuous in their nature—he readily understands that.

MR. DUKE—I don't think there will be any difficulty in that at all, I do not see why he cannot allege that it was continuing in a certain place.

MR. WILLIAMS (Marengo)—I wish to ask Mr. Proctor a question.

THE PRESIDENT—The gentleman from Chambers has the floor.

MR. WILLIAMS—The gentleman from Chambers will yield.

MR. DUKE—Certainly.

MR. WILLIAMS—I would like to know what offenses you call the “continuing” offenses?

THE PRESIDENT—It seems to the Chair that colloquy is out of order, he may be permitted to ask the gentleman from Chambers a question.

MR. WILLIAMS—I beg to ask the gentleman from Chambers what the gentleman from Jackson meant by the word “continuous” offense.

MR. DUKE—I am unable to answer the question, but in answer to the gentleman from Jackson, I desire to say if it is a continuous offense there is no reason why he could not say how long it continued if it was continuous at a certain place. There is no reason why he could not put that in the indictment. Now, I am not surprised at my friend in opposing this. You will find that most of the solicitors — and I believe my friend who asked the question happens to be a solicitor—most solicitors do not wish to have their toes tread upon, and they like to convict.

MR. O'NEAL (Lauderdale)—And we like to acquit.

MR. DUKE—Yes, sir.

MR. PROCTOR—How many gentlemen of this Convention, except Mr. Smith, who have been on the floor defending the amendment, who are not defending attorneys?

MR. DUKE—I will answer the question of the gentleman. I do not know in what capacity the different lawyers in the Convention practice.

MR. WILSON (Washington)—Are you an attorney, may I ask?

MR. DUKE—Well, yes sir.

MR. WILSON—Are you a prosecuting attorney?

MR. DUKE—I do both, it depends on the character of the pocketbooks of my clients.

MR. WILSON—Are you a solicitor?

MR. DUKE—No, sir.

MR. WILSON—Do you defend more than you prosecute?

MR. DUKE—Yes, sir; I do.

MR. WILSON—And so do the rest of the gentlemen I take for granted.

MR. DUKE—I have frequently prosecuted and I have been a solicitor. And right here, I was a special solicitor a good many years ago, when I could afford to quit my lucrative practice for such a position. (Laughter.) I had a case, prosecuting a man in an adjoining county, and the case was one against a man for carrying a concealed pistol. After investigating that matter the attorney came to me and he said my client says that he don't know anything about this, he never carried a pistol in his life, and he don't know anything about it, and the prosecutor won't tell me anything about it. Contrary to the usual custom of solicitors, I agreed with him that he might have a continuance in order that he might get up his evidence. I have been in the same position myself in defending cases, and I have never yet found one of the regular solicitors that was so accommodating as I was on that occasion. Now what is the harm, what is the harm, gentlemen, in having the indictment state the time and place? Gentlemen, suppose an indictment is brought against my friend Proctor for carrying a concealed pistol, of course he never carries one—he takes the indictment and looks at it, he says, well that offense must have been committed in Montgomery County, I have been living here for several months, twelve months. I never carried a pistol, but what am I to do about the proof? Somebody is going to get upon the stand and swear that I did it, and perhaps two or three swear that I did it. If I knew the time and place, I could go to the witnesses that were there and perhaps prove my innocence, but instead of that I cannot do it because I do not know the time and place.

MR. PROCTOR — If a witness would perjure himself by swearing that I carried a concealed pistol, wouldn't he likewise perjure himself by alleging the time and place?

MR. DUKE—Yes, sir, and that is the point, if he perjure himself in alleging the time and place, I would look at the indictment and seeing the time and place I would go to the time and place and get my witnesses, and I would show that the gentleman's prosecution was founded upon perjury. That is just the point.

THE PRESIDENT—The time of the gentleman from Chambers has expired.

MR. O'NEAL (Lauderdale) — I move that the time of the gentleman from Chambers be extended.

MR. DUKE—I am much obliged to the gentleman, but I will not take up any further time of the Convention.

MR. PROCTOR—I believe that the question has been sufficiently discussed, and I therefore move the previous question.

MR. WILSON (Washington)—The Chairman of the committee has not yet been heard.

MR. REESE—I move to lay the amendment upon the table.

MR. ESPY—I rise to a point of order. The previous question has been ordered.

THE PRESIDENT—The previous question has been moved but not ordered.

A division was called for and by a vote of 56 ayes and 36 noes the amendment was laid upon the table.

MR. REESE—I desire to offer an amendment.

The Secretary read the amendment as follows: Amend Section 7 by inserting after the word "committed" in the 6th line the following: But in prosecutions for rape, adultery, fornication, sodomy or the crime against nature, the court in its discretion may exclude from the court room all persons except such as are necessary in the conduct of the trial."

MR. REESE—The amendment does not admit of much discussion.

MR. BAREFIELD—I move to lay the amendment on the table.

THE PRESIDENT — The gentleman from Dallas has the floor.

MR. REESE — The amendment is not one that admits of much discussion, but I must say that it is one that recommends itself to the common sense and delicacy of every delegate upon the floor. It is a provision that occurs in a great many Constitutions—it occurs in the recent Constitutions that have been adopted, and the phraseology is copied bodily from the Constitution of Mississippi. Mr. President, the excuse that is made for mob law and lynch law in this country is the difficulty and embarrassment of attending the trial in this kind of cases. The prosecutrix—and it is a terrible ordeal to put one through—to compel the prosecutrix in this sort of a case to go into a court house and

face a large and interested audience of idlers and people prompted there by curiosity to tell a tale that is more painful than anything that could be imagined. Mr. President, I think the amendment is a most reasonable one and a most proper one for the protection of the prosecutrix, and for the protection of the young boys and idlers that attend this character of cases, out of idle curiosity.

MR. BARFIELD—I would like to ask the gentleman if the Legislature cannot provide for that.

MR. REESE—No, sir, not with this provision in the Constitution.

The provision of Section 7 here, is that trials must be public, and unless this amendment to the provision is put in here all trials must be public. It has been suggested to by some gentlemen on the floor that in some parts of the State Judges have adopted the suggestion made in this provision. If it has been done, it was contrary to the Constitution of Alabama. This same idea is embodied in an ordinance that has been introduced here and sent to the Judiciary Committee, but in examining the Constitution of other States, I find that it appears as a proviso in the preamble and bill of rights.

MR. ESPY—I move to table the amendment offered by the gentleman from Dallas.

A vote being taken the amendment was tabled by a vote of 57 ayes to 34 noes on division.

MR. LOMAX—I desire to state to the Convention that in the section as reported by the committee two changes have been made. One is by inserting in the 4th line the words: "to testify in all cases in his own behalf if he elects so to do" and by adding at the end of the section: "but the General Assembly may by general law provide for a change of venue for the defendant in all prosecutions by indictments, and that such change of venue may be heard and determined without the personal presence of the defendant so applying. The first change merely puts into the Constitution what is now the established law, the right of the defendant to testify in his own behalf; and the second is merely intended to permit changes of venue to be granted in those cases in which, owing to great public excitement in reference to the crime committed, the person charged with the crime may be in danger of lynch law if carried to the scene of the crime shortly after its commission. This permits courts to hear and determine applications of that sort without the personal attendance of the defendant. I move the adoption of the section as reported by the committee, and on that I call for the previous question, unless some gentleman desires to speak. I don't care to shut off debate at all.

MR. WALKER (Madison)—I wish to offer an amendment.

The clerk read the amendment as follows: "Amend by striking out all of Section 7 after the words 'Due process of law' on line 8."

MR. WALKER—The words proposed to be stricken out by this amendment allow an application by an attorney for a change of venue without the presence of the defendant. It occurs to me that that is a very considerable innovation upon the established rules of law, and is a dangerous one. The result of it would be that a defendant, especially if he had obtained bail before the change of venue was made and gone to Texas, could remain in Texas until it was determined that the change of venue be allowed, and might elect to remain in Texas, if it were refused. It has been an established rule in the administration of criminal law as far back as we have any knowledge, that the personal presence of the defendant in criminal cases shall always be required, and the purpose of that requirement is that the defendant may be in the hands of the court, so that the visitation of the law upon him shall not be escaped. A provision of this kind would defeat that purpose of the law, I realize the danger that was in the minds of the members of this committee in putting this provision in here, but it is a recognition of the powerlessness of the law as now administered. I do not think that recognition itself should go into the Constitution. The thing to be done, is to provide such safeguards that a recognition of the powerlessness of the law shall not be necessary to provide for the safety of the defendants to make an application of this kind under the conditions referred to by the chairman of the committee. Why, gentlemen, it is an established rule of law that a defendant cannot be heard in a criminal case by any court unless he is practically within the custody of the court, and if he is convicted and takes an appeal, and pending that appeal gives a bond, why the appeal falls to the ground if he forfeits his bond and gets out of the State. Courts heretofore have always refused to hear anybody addressing them from across the border. That is a good old rule in the common law, and I do not think that we have reached the point that it should be abandoned. It is a recognition that the powers of the law have been faulty, that we cannot protect persons in the custody of the law. That is the only excuse that can be given for this innovation. I submit that it is a dangerous innovation, and that the Convention should pause before it adopts it.

MR. FITTS—The amendment offered by the distinguished gentleman from Madison seeks to strike out all of the last portion of Section 7, seeks to strike out these words, "But the General Assembly may, by general law, provide for a change of venue for the defendant in all prosecutions by indictment, and that such change of venue on application of the defendant, may be heard

and determined without the personal presence of the defendant so applying therefor." Mr. President, the committee gave very serious and careful consideration to this addition. It is an innovation, it is an addition to the bill of rights of 1875, and nothing was put into the bill of rights by the Committee, except after the most serious consideration, but it was thought to be a step in the right direction. It is not open to the criticism offered by the gentleman, and if he had maturely considered, I do not believe that he would have made the criticism quite so broad. It does not provide for the court's hearing anything from any one accused who is across the border, nor does it provide for hearing anything from an accused who is not in custody. It does not seek to provide that an alleged criminal can secure a change of venue while a fugitive from justice or while not in custody, but it seeks to provide a wholesome safeguard against what we know from experience is the time of action when the mob forms and when the heat is up, and when if there is going to be a lynching, it is most likely to occur. Lynchings are most likely to occur at the first appearance of the freshly arrested criminal when he is being carried to the court house for the first time to have the first orders made in his case. It does not mean that these orders could or should be made while he is a fugitive or while he is not yet in custody, but it does seek to provide that as that is a mere order in which he has no reason to be present to testify at which there is no reason or necessity for his presence that the application can be presented in open court without bringing him out of jail and incurring the chance of his being seized and taken from the officers of the law, and without incurring the necessary expense to send a military company there to guard him on his first appearance in the court house, while this order is being made.

MR. WEATHERLY (Jefferson)—Will the gentleman permit a suggestion.

THE PRESIDENT — Will the gentleman permit an interruption?

MR. FITTS—Certainly.

MR. WEATHERLY — Would there be any objection to amending the Section something like this: "Provided, such application shall not be heard or determined where the defendant in whose behalf the application is made is a fugitive, or is not in custody of the law.

MR. FITTS—I would have no objection as a member of the Committee, but it is not necessary. It simply provides when one of those crimes have been committed which excites peoples, which disturbs the quiet of the community, which stirs them up that you need not carry that man in person to the court house, but that he can make his application for a change of venue through his au-

thorized attorneys and have it heard and determined by the court without his personal attendance in the court house. This is a common sense proposition. What is our experience and observation in this State, in this Southland? When is it, and what time is it, in the progress of criminal agitation that men are seized and taken out of the hands of the officers of the law? The time is always immediately after he is first arrested, either while the sheriff is getting his prisoner to the jail, and if not at that time almost always at the time when carried out of the jail to petition for some such order as this.

MR. WALKER—Will you permit me to make a suggestion?

MR. FITTS—Certainly, sir.

MR. WALKER—Wouldn't it be entirely within the power of a defendant when he has given bond to make this application from New York or anywhere else?

MR. FITTS—Well, if he had obtained bond, then there would certainly be no objection to his making it from New York or anywhere else, because it is the bond that is looked to to have him returned to the court house for trial.

MR. COLEMAN (Greene)—May I ask a question.

MR. FITTS—Certainly, Judge.

MR. COLEMAN—I propose to offer the following amendment.

The Secretary read the amendment as follows: Amend Section 7 by adding thereto, the following words: Provided, that at the time of the application for change of venue the defendant is imprisoned in jail or some legal place of confinement."

MR. FITTS—As a member of the Committee, I would have no earthly objection to that, though I think it is sufficiently covered as it is.

MR. LOMAX—If the gentleman from Tuscaloosa will permit me, while I do not see any necessity in the world for those words, on behalf of the Committee, I am willing to accept them. I believe, following the case of Warwick vs. The State, any court would refuse to hear an application from a defendant who is a fugitive. The Supreme Court did in that case; but I am perfectly willing to accept that.

THE PRESIDENT—The Chairman of the Committee asks unanimous consent to add the amendment offered by the gentleman from Greene.

MR. WALKER—I withdraw my amendment.



THE PRESIDENT — The gentleman from Madison asks unanimous consent to withdraw the amendment offered by him. The Chair hears no objection to the withdrawal by the gentleman from Madison of the amendment proposed by him, and the ordinance by the Committee, the amendment proposed by the gentleman from Greene, and it is so ordered.

MR. WADDELL—I have an amendment.

The Clerk read the amendment as follows: Amend Section 7 by adding on the fifth line after the word "do," the following words, "And the wife or the husband may be allowed to testify for or against each other where the charge is infanticide."

MR. FITTS—I make the point of order, that that amendment is not germane to the pending amendment which has been accepted by the committee and has not yet been put to the house, and covers an entirely different subject.

THE PRESIDENT—It has been absorbed into the section by unanimous consent of the Convention. I overrule the point of order. The gentleman from Russell has the floor.

MR. WADDELL—There were two cases in Russell County that have gone unwhipped of justice, because the wife could not testify against the husband. In one case, where the mother stood and saw her child's brains beaten out before her eyes, and the law would not allow her to give evidence in the case. The man was convicted on circumstantial evidence and sent to the penitentiary for ten years, but he ought to have been hanged.

MR. FOSTER—May I ask the gentleman a question?

MR. WADDELL—Yes, sir.

MR. FOSTER—Isn't it within the legislative power to enact laws to that effect?

MR. WADDELL—I think not.

MR. LOMAX—Mr. President, I think it is clearly within the domain of legislation rather than Constitutional enactment, consequently I move to lay the amendment of the gentleman from Russell upon the table.

A vote being taken viva voce, the amendment was tabled.

MR. LOMAX—I move the adoption of the section, as amended, and on that I call for the previous question.

The previous question was ordered by a vote of the Convention and the question then recurred on the adoption of the section as amended, and the section was adopted.

The clerk here read Section 8: "That no person shall be accused or arrested, or detained, excepting cases ascertained by law, and according to the form which the same has prescribed; and no persons shall be punished, but by virtue of a law established and promulgated prior to the offense and legally applied."

MR. LOMAX—I move the adoption of Section 8, as read.

A vote being taken, the section was adopted.

The clerk read Section 9 as follows:

Nine—That no person shall, for any indictable offense, be proceeded against criminally, by information, except in cases arising in the military and volunteer forces when in actual service or by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office otherwise than is provided in this Constitution; provided, that in cases of misdemeanor the General Assembly may, by law, dispense with a grand jury, and authorize such prosecutions and proceedings before Justices of the Peace or such other inferior courts as may be by law established.

MR. OATES—I desire to offer an amendment to that section.

MR. LOMAX—Will the gentleman permit me to state to the Convention the changes in the section before the amendment is read?

MR. OATES—Certainly.

MR. LOMAX—The only change in this section consists in striking out the named misdemeanors and inserting the word "misdemeanors," without naming those particular offenses.

PRESIDENT PRO TEM. (Mr. Willett)—Does the gentleman from Montgomery insist on his amendment?

MR. OATES—I do.

The clerk read the amendment as follows: "Amend Section 9 in line 2, after the word "information," insert the following, "except when the felony has been committed and the grand jury at its first term thereafter fails to find a bill of indictment, the court may order such a prosecution."

MR. OATES—I will briefly explain that amendment. After the insertion of these words, the gentlemen will see in the second line that no person shall, for any indictable offense, be proceeded against criminally by information; then follows, except certain cases. This amendment is except when a felony has been committed, and the grand jury fail to find an indictment at the first term thereafter. Then it will read "and except in cases arising in the military and volunteer forces," etc. The reason why I offer this amendment, gentlemen of the Convention, is that the grand

jury is supposed to be the fountain of administrative justice, and our Constitutions from the first having required that felonies or charges of felonies must pass to the grand jury and by that body an indictment be returned before one could be put upon his trial on such a serious charge. That was conceived and intended to protect men against fictitious charges of such grave offenses. But what is the condition today? It is a notorious fact that in more localities than one in the State of Alabama bribery is at times practiced upon this body in order that rascals may escape punishment. Cases have come within my knowledge in more counties than one where, under our law, the grand jury, you know, may be composed of fifteen men and it requires twelve of them to concur and find a bill, and where a murder has been committed and person charged therewith has friends and means which can be used, it has been found that they have succeeded in obtaining a sympathy and inaction, or rather a negative action upon the part of enough of the grand jury to reduce the number who are disposed to find a true bill, and none can be found, and then the greatest of crimes goes unwhipped of justice. Now how are you going to remedy it? It is a great evil, and if any gentleman in this Convention will show me a better way to remedy it I will cheerfully support it. Why, gentlemen, it has been the custom, or rather it has grown into a practice, that wherever a man who has any friends or any money, has murdered nobody but a negro, there is scarcely any danger of his being indicted. Step by step crime always progresses until we see instances now where a white man has murdered a white man and in more cases than one where the grand jury refused to find a bill.

MR. BAREFIELD—I would like to ask a question.

THE PRESIDENT PRO TEM.—Will the gentleman consent to be interrupted?

MR. OATES—Certainly.

MR. BAREFIELD—I would like to ask the gentleman if a Judge is any better morally than the citizens that compose the juries of the county, and if a Judge could not be bribed about as easy as twelve men, or as eighteen men who are supposed at least to be good citizens of the county?

MR. OATES—If he can, Mr. President, he ought to be impeached, and if not the good citizens in the community ought to rise and kick him out of there. If there is the kind of the Judges you have, farewell to the administration of justice and triumph of law. Now, gentlemen, I have not the time to give you my observations in extense upon this subject. It is not one that is new to me. I have been observing it for some time, and it is a growing evil. How can you remedy it, that is the question. How can you? Now I could mention instances. I could give you names

and state to you cases where this has occurred of a horrifying character, but that I presume is not necessary to impress you with the importance of it. Where I have heard the evidence adduced in one or two cases myself, a case of willful murder, murder in the first degree, and grand jury after grand jury sat there and although the evidence was presented to them and not questioned no bill was ever returned. When did any of you ever hear, with one single exception, of anybody in Alabama being indicted for lynching and taking the lives of people? The only instance of which I am acquainted occurred in Washington county, where they found the lynchers and prosecuted them, and sent some of them to the penitentiary. Not another instance, not another one. And it is not a single offense, the outrage committed by a negro upon our white women, assaults upon them is something most difficult to suppress, men will—relatives and neighbors feeling indignant get hold of such a wretch soon after it occurs, they are very apt to lynch him. But it is not confined to that at all.

In many, many cases of charges of murder and some of much less gravity a party is taken out and lynched. Gentlemen, it tends to degrade our community. It renders life safe to no one and it ought to be broken up.

I will relate one instance which occurred within my own knowledge where some white men went in pursuit of a negro man who had offended them, not by any crime, but they went into a town or village and went into a barroom, which was kept by an old negro, a man of such character that the authorities allowed him to open a bar and dispose of liquor. In talking about the matter, the old negro ventured to remark that the negro they were pursuing had not committed an offense sufficient to warrant them in killing him and that he hoped they would not do it. My information is that soon after taking a drink or two and feeling lively, they took that old negro out in front of his bar and shot the life out of him. That is but one case. There are numerous occurrences and some worse than that.

The time of the gentleman here expired, and on motion of the delegate from Cleburne (Mr. Howell) his time was extended ten minutes.

MR. OATES—I thank the Convention and my friend, the delegate from Cleburne, and I shall finish my statement as soon as I can. This is an intelligent body and I wish merely to state what is involved in the amendment.

Now this, unlike other crimes, does not stalk forth from one to another and don't extend to taking the lives of white people. Suppose that nobody is killed by white men but negroes, and they manage in many cases not to be indicted. Now go with me in a plain practical statement of facts. Those people are an in-

ferior race. We do not believe the most of them are entitled to a place in the administration of the State affairs along with and equal to the white men. We are taking steps here to elevate the suffrage and to cut out the masses of these people, not all because some of those people have qualified themselves by the establishment of a good character and intelligence enough so as to give them a respectable standing as citizens and give them sufficient knowledge to cast a ballot, but we know they are dependent upon the white people, that we are practically their guardians. There is not a negro in office in the State of Alabama, except a few appointed by the President and very few of them, and when they do not take any part in making or administering the laws, is it not the bounden duty of the white men to give them the full protection of the law? I tell you, gentlemen, the responsibility is on us and it is a fearful one. It is a weighty one and as sure as a just God holds men accountable for their acts in this world that responsibility is on us and when we allow the red-handed murderer of these people to go unwhipped of justice, it is a fearful thing that we are responsible for. Will you like men discharge your duty to these people who are dependent for their protection upon us, or will you allow the lawless to maltreat them and shed their blood and act towards them in some cases most inhumanely and deny him the protection of the laws. If you do you degrade our people and our institutions. It is unworthy of a noble race, and we should convict the perpetrators without any reference to anything in our past history. Take hold of this thing and guard their rights and protect their lives as we do our own.

These are the objects I seek to attain by offering this measure so that after giving the grand jury an opportunity to find an indictment soon after the crime is committed and if they do not at the first session act, the judge or court may order the prosecution instituted. Not that he must but that he may. That shifts the responsibility to him and if he is what he ought to be, if he is a true judge, and is satisfied that a crime against nature has been committed, any felony, which should by all means be investigated, he will order it. Sometimes felonies don't require such action as that and if the judge is satisfied that public good and common justice don't require it he will not take the responsibility of making the order; but presuming he is what he ought to be, whatever a judge should be, can we not risk him and let him say whether proceedings shall be had against the suspected party by information filed. It seems to me that the case is exceptional because of practices that have been inaugurated to dodge responsibility and because of the course that has been pursued which has diverted grand juries from noble purposes and converted them by means of bribery into a shield to protect the guilty.

MR. PITTS — Will not the adoption of your amendment amount to the abolition of the grand jury?

MR. OATES—I think not. But I will say furthermore, if the grand juries cannot be relied on to indict the crimes to which I have alluded, they ought to be abolished.

MR. PITTS — Will it not put the prosecution within the hands of the families and friends of those injured?

MR. OATES—Not necessarily. It will be in the hands of the officers of the law.

MR. PITTS—Suppose the crime of burglary has been committed and the grand jury ignores it, won't this put it in the power of those back of the prosecution to proceed against a suspected person?

MR. OATES—Not at all. They would have to deal with the judge, and if the judge don't see proper to order it, they cannot proceed.

MR. SANFORD—How do you propose, that the information shall be filed, at the request of the solicitor?

MR. OATES—On the order of the court and not in the absence of such order.

MR. PITTS—On what information would the judge act?

MR. OATES—You would have to ask the judge.

MR. PITTS—How would it be brought to the knowledge of the judge?

MR. OATES—These things are generally known.

MR. PITTS—But would he proceed on his own motion?

MR. OATES—If he is satisfied a felony has been committed he would order an investigation.

MR. BOONE—And would not the legislature have the power to regulate all that?

MR. OATES—Yes.

MR. REESE—Where the conditions in a locality are such as to protect a man from indictment by the grand jury, will not the same influence protect him from conviction by a petit jury? Is not there a great deal more trouble about petit juries turning men loose than about the failure of grand juries to indict and would you not have to abolish petit juries in the classifications you speak of to get justice?

MR. OATES—Fortunately we have not reached that stage of degradation yet and I trust to God we never shall.

MR. BULGER—If I understand the amendment offered by my friend from Montgomery and its influence, it would be very unwise to put it in the fundamental law. It is clearly a departure from a time honored practice and custom under our theory of government that has proved so satisfactory for many, many years. The gentleman in support of his position cites exceptions to the general rule. He cites cases in which the grand juries have not indicted men who in his judgment ought to have been indicted. It is always unsafe to bade a rule of action on exceptions to the general rule. Is the Judge a better man than the grand juries are? If so, why so? The grand jurors under our system are selected from the body of the county on account of their integrity, intelligence and high standing among their fellows. A Judge is selected from a larger body on the same ground and for the same reasons. Gentlemen have failed to tell this Convention why a Judge is safer to indict a man than a grand jury is. In the one case the matter in controversy is left to eighteen men to judge, in the other to only one, and I maintain it is eighteen times as safe in the hands of the grand jury as it is in the hands of the Judge.

Now, Mr. President, while there are exceptions and cases in which men should have been indicted when they actually were not the exceptions to which the gentleman refers never go out of date and if the first grand jury in session after the crime fails to do its duty because of bribery or other cause as the gentleman seems to intimate, we only have to wait six months under our practice to have another grand jury. I believe no citizen of Alabama ought to be put upon a final trial unless a grand jury of the community in which the crime is committed says by an indictment that he ought to be put upon trial before a court and a traverse Jury. I am unwilling to depart from the time honored practice that has proven healthy not only to our system of government but to all civilized governments that a man should first be indicted before he is put on trial.

MR. JENKINS—One of the prime principles in all governments instituted among men is for the protection of life, liberty and property of the citizen and when the machinery we have devised fails to accomplish that purpose, I maintain there ought to be some resort to extreme means so that you could say to any man "In the name of justice and of God you must come up to the bar and stand your trial for this offense of which it is said you are guilty."

There is not a county in the State of Alabama in which members on this floor do not know of instances time after time—I could name them in Wilcox, Monroe, Butler and adjoining counties—where not through bribery but through influence and power of position men have been stricken to death and grand juries through fear or favor have refused to do their duty. There have

been murders committed, arson and the darkest crimes that blackens the statute books, and through fear or favor there have been no indictments. I have known a case—I won't call the name—where the terror of one man prevented witnesses from going before a grand jury and swearing to what they knew, and when every man in that county, you might say, knew the fact and yet the grand jury could not get a man to come in before them and swear as to the facts. But now in our circuit we happen to have on the bench a judge who is as fearless as the most undaunted and with the power placed in his hand by this amendment. I do not believe any one man or any set of men or any power or influence under the sun could deter him from doing his duty under the law. And I say no man has a right to sit upon a bench unless he has the physical courage to resist all improper influences. I think we have such Judges now, but if we have not, we will have them.

I have talked with delegates on this floor and they have mentioned many cases in their county where the grand juries have failed to do their duty.

We cannot calculate the deterrent influence on crime that this will have when you say to everyone, be they never so high, "It matters not how great is your influence, or how much money or how much political influence you have, if you commit a felony of any kind you have to come up and face a petit jury and be tried for it." That will serve to create a sentiment of respect for the majesty and greatness of the law and serve to put the law in that high place it ought to occupy in the minds of the people. But when people see murder and arson and other felonies committed in the light of day and the men committing them walk around unwhipped of justice with no indictment, the feeling is fostered that they can do anything likewise. There is not a white man who lives in the Black Belt that does not feel that he can kill a negro and come clear. That is the condition of things that should be changed and we can change it if we will and I say it is our duty to make every man come strictly under the law.

MR. BAREFIELD—Are there not more indictments than convictions?

MR. JENKINS—Yes, and if there were more indictments there would be still more convictions and less crime in Alabama. And because that a certain twelve men have failed to do their duty or because the State happens to have a weakling in the place of a solicitor or because of some technicality of some judicial procedure, some guilty man has been let go scott free is no reason to continue such a procedure and make it unchangeable and iron bound, as it were. So when the whole machinery of justice falls and breaks to pieces and when the public conscience is outraged and justice stands degraded, let there be a place somewhere to which the outraged citizen can go and say "I want justice." I



know a man living in South Alabama whose boy was shot in the back as he sat talking to his family at their fireside. The grand jury failed to indict the assassin and this man moved away. I asked him about it and he said I did not get justice. I felt like taking my shot gun and if it had not been for my wife and children I would have done it. Gentlemen, there are others who feel like taking personal vengeance because grand juries failed to do what ought to have been done. I expect I have consumed my time but I have often thought about this thing and prepared a bill for the Legislature along these very lines and found when I examined the Constitution that that wouldn't do because the Constitution has this plain provision that every felony should be proceeded against by indictment. As Governor Oates said this **does not force the Judge to do it**, he is simply allowed to do it, and I believe he will do it where the necessity exists.

MR. DUKE—I offer an amendment.

The amendment was read as follows: Amend amendment by inserting immediately after the word "felony" the words "which may be punished capitally."

MR. OATES—So far as I am concerned the amendment is acceptable to me.

MR. DUKE—I am opposed to giving the judge the power of a grand jury in all these felonies. I think the object intended by the gentleman from Montgomery will be reached by making it apply only to felonies that may be punished capitally.

MR. PETTUS—The amendment offered by the gentleman from Montgomery, as amended by the gentleman from Chambers, seeks to remedy a recognized evil which has been eloquently portrayed by the distinguished gentleman from Montgomery; but I do not believe that the remedy that is proposed will be adequate. It has been said here in debate upon the floor that influence reaches a grand jury and may prevent it from discharging its duty to the State and to the people. I agree with what the distinguished delegate from Montgomery has said about a high and exalted judiciary, but we are forced to admit that judges are human beings, and that they are as liable to be reached by public opinion and by influence, and perhaps as much so as the twelve or eighteen men composing the grand jury. It seems to me this is a very radical departure from well established principles of law that a judge who is to be the trial judge in a case shall set in motion the machinery of the law for prosecution of offenses of this character. It seems to me that is a very unwise departure from long established principles of law.

Another result from the adoption of this amendment would be that you take from the grand jury the responsibility which rests

upon them to discharge their duty to the State if you divide the responsibility, the whole of which now rests upon their shoulders.

MR. FITTS—Speaking of the long established use of the grand jury, I ask if the prophet of old did not make this announcement: "Seek out and find the old ways and walk therein and ye shall find rest for your souls?"

MR. PETTUS—I take it for granted that the question carries its own answer. The very fact that this amendment seeks to divide the responsibility that rests upon the shoulders of the grand jury will have a tendency to make that body more lax in the discharge of its duty than it now is. If the grand jury has any doubt about whether public opinion will uphold the finding of an indictment, it will put it off on the judge these capital cases and make him shoulder the responsibility which they shirk. I believe in that way this amendment will do more to defeat its end than it will do to remedy the evil it seeks to stop.

Another thing is public opinion after all, must justify and enforce the law before the law can be effective, and whether you put the machinery of the law in the hands of the grand jury or in the hands of the judge, it is public opinion that enforces it in the end. The law is merely a lever and unless it rests upon the fulcrum of a solid and well-founded public opinion, it will be ineffective and useless on the statute books—it will be a dead letter. For that reason, I move to lay this amendment on the table.

The motion to table was withdrawn at the request of the delegate from Greene (Mr. Coleman).

MR. COLEMAN — I have had the honor to represent the State as prosecuting attorney as long or longer than any man in the State. These questions have occurred to me often, and I have considered frequently the troubles which arise such as have been suggested by the delegate from Montgomery. But remembering that this is a free country and that there should stand some palladium between the law and the prosecuting attorney, and the rights of the people, I have refrained and do now consider it a most dangerous innovation to strike down the power and authority afforded to the grand juries of our country.

The gentleman has referred to cases in Montgomery, and my friend to the left has referred to cases within his knowledge. The evil does not arise from the fact as stated by them. Who is it that forms the grand juries of this county? And who is it that selects and provides for the selection of the petit juries? The jury system of Montgomery County was established by the representatives of Montgomery County, and if they were not satisfied with the plan adopted or if, under the law, proper and competent grand jurors are not selected, the fault does not lie with the law.

but in the statutes under which the grand and petit jurors are drawn.

MR. OATES—I desire to correct the gentleman. My remarks did not apply alone to Montgomery, but were general.

MR. COLEMAN (Greene)—The gentleman referred to cases in Montgomery and I say the delegates to this Convention must remember that if competent jurors are not selected it is not a deficiency in the organic law of the State but is owing to a defective plan of selecting grand and petit jurors and shall we admit of this innovation, this striking down of the protection between the power of the courts and the liberties of the people because the statutes of the State are not remedied or improved?

That is a matter wholly within the discretion of the Legislature. They can select and provide for the selection of fit and competent persons. As it is now, names are put in some box and are drawn out at random, and that is the defect not in the organic law, but from the fact that in drawing them out, they are not able to reject any of the names, and thus you get incompetent grand jurors and petit jurors to try the cases. I trust the delegates to this Convention will consider well before they put the power in the court or the prosecuting attorney to start these prosecutions. I have time and again felt the desire to exercise this power, but as I grow older and have retired from interfering or practicing in that kind of cases and consider the condition of our country, I realize it is better to suffer the ills we bear than to fly to others we know not of.

MR. OATES—I would like to ask the gentleman this question: Notwithstanding we have had a great many lynchings in Alabama, does the gentleman know of any case where the grand jury ever returned an indictment, except that single one in Washington County.

MR. COLEMAN—If the gentleman will go and look at the rolls of the penitentiary, he will find there a number of men that I had sent there for that offense.

MR. OATES—For lynching?

MR. COLEMAN—For whitecapping.

MR. OATES—I asked for lynching.

MR. LOWE (Jefferson)—Does not the gentleman think that whatever influence might be brought to bear to prevent witnesses from appearing before a grand jury and securing an indictment, would also prevent them in general trials and that prosecutions under this system would be a failure after all in most cases?

MR. COLEMAN—I do not doubt it but I look at this question from a broader standpoint. It is whether the poor man without money has the protection afforded to him by the intervention of a grand jury. It is manifestly unjust to trust a prosecuting attorney with his association and influence with the judge to say when and who shall be proceeded against by information. Where does the judge get his information? Is he to examine the witnesses and have an ex parte investigation of the case? Must not he necessarily derive his information from the prosecuting attorney or else institute proceedings ex parte or have a preliminary trial. Even in the Federal Court the information filed by the district attorney proceeds upon a finding by the grand jury. I do not say it positively, but I do not think there is a State where the liberties which are secured to the people by the intervention of a grand jury are not recognized and it is a most dangerous innovation and I protest against this Convention striking down this palladium for the people of this State.

MR. PETTUS—I now renew the motion to table the amendment.

MR. HOWELL—On that I call for the yeas and nays.

The delegate from Cleburne withdrew the call and the call was renewed by Mr. Oates and was sustained, and the roll call resulted as follows:

#### AYES

Barefeld,	Haley,	Parker, of Elmore,
Bartlett,	Heilin, of Chambers,	Pearce,
Beavers,	Hodges,	Pettus,
Beddow,	Hood,	Phillips,
Bethune,	Inge,	Pitts,
Blackwell,	Jackson,	Proctor,
Brooks,	Jones, of Hale,	Reese,
Bulger,	Jones, of Wilcox,	Renfro,
Byars,	Knight,	Reynolds (Henry),
Cardon,	Long, of Butler,	Rogers, of Lowndes,
Carnathan,	Lowe, of Lawrence,	Rogers, of Sumter,
Chapman,	MacDonald,	Sanders,
Cobb,	McMillan, of Wilcox,	Sentell,
Coleman, of Greene,	Martin,	Sloan,
Cornwall,	Merrill,	Smith, Mac A.,
Ferguson,	Miller, of Wilcox,	Smith, Morgan M.,
Fitts,	Moody,	Sorrell,
Fletcher,	NeSmith,	Spears,
Foster,	Opp,	Spragins,
Freeman,	O'Rear,	Stewart,
Glover,	Parker, of Cullman,	Thompson,

Willet,	Williams, of Barbour,	Wilson, of Washington,
Walker,	Williams, of Marengo.	Winn,
Weatherly,	Wilson, of Clarke.	

TOTAL—71

## NOES

Messrs. President,	Grayson,	Maxwell.
Ashcraft,	Harrison,	Murphree.
Banks,	Henderson,	Norman,
Boone,	Howell,	Oates,
Browne,	Howze,	O'Neal of Lauderdale.
Burns,	Jones, of Montgomery,	O'Neill (Jefferson).
Cofer,	Jenkins,	Palmer,
Cunningham,	Jones, of Bibb.	Porter.
Dent,	Kyle,	Sanford,
Duke,	Leigh,	Selheimer,
Eley,	Locklin,	Studdard.
Espy,	Lomax,	Waddell,
Foshee,	Long, of Walker.	Watts,
Graham, of Montgomery,	Lowe, of Jefferson,	White,
Graham, of Talladega,	Malone,	

TOTAL—44

## ABSENT OR NOT VOTING

Almon,	Greer, of Calhoun,	Pillans,
Altman,	Greer, of Perry.	Reynolds, of Chilton,
Burnett,	Handley,	Robinson.
Carmichael, of Colbert,	Heflin, of Randolph.	Sanford.
Carmichael, of Coffee,	Hinson,	Searcy,
Case,	King,	Smith, of Mobile.
Coleman, of Walker,	Kirk,	Sollie,
Craig,	Kirkland,	Tayloe,
Davis, of DeKalb.	Ledbetter,	Vaughan.
Davis, of Etowah,	McMillan (Baldwin)	Weakley.
deGraffenreid,	Miller, of Marengo.	Whiteside.
Eyster,	Morrisette,	Williams, of Elmore.
Gilmore,	Mulkey,	
Grant,	Norwood.	

So the amendment was laid on the table.

During the roll call:

MR. JONES (Montgomery)—This morning the gentleman from Mobile (Mr. Smith) asked me to pair with him on the proposition to authorize nine jurors to find a verdict. It may be that he considered that that was a general pair on this report. If he

were here I would vote no. I don't know how he would vote, but having made the pair I do not like to be put in the attitude of breaking it.

THE PRESIDENT—This is an entirely different question.

MR. JONES (Montgomery)—Then I will vote no.

After the roll call had been finished and the result announced:

MR. JONES (Montgomery)—I have an amendment to offer.

The amendment was read as follows: Amend Section 9 by adding after the words "actual service" in the third line of the printed bill the words "or when assembled under arms as a military organization."

MR. JONES (Montgomery)—I will state briefly the object of the amendment. Under the law and the Constitution the members of the volunteer organization are liable to a court martial only when they are called on duty, in the enforcement of law, which they are organized in a camp of instructions and possibly when they are ordered to the drills that the statute provides for. There are a good many cases where the organizations are not in actual service such as when they go to attend trial drills or some fete or celebration and it often happens that offenses are committed that for the good of the organization and discipline ought to be punished by court martial. The object of my amendment is to allow the military authorities to deal with a man who, when he goes to a picnic under arms, gets drunk and raises a row, and not allow him to escape punishment by court martial under the plea that he was not in actual service. I was a long time connected with the sanitary service and I offer this for the good order of military discipline.

MR. LOMAX—Are these offenses provided with proper punishment in the military law?

MR. JONES — Yes, but without this you cannot proceed against them.

MR. ROGERS (Sumter)—Would this take the punishment out of the hands of the civil authorities?

MR. JONES—I think not. A private might slap an officer and he could be court martialed and still could be proceeded against in a civil court just like he could for murder.

A vote being taken the amendment was adopted.

MR. FERGUSON—I have an amendment.

The amendment was read as follows: Amend Section 9, line 5, after the word "misdemeanor" by adding the words "and grand larceny."

MR. FERGUSON—I wish briefly to explain to the Convention the purpose of this amendment. In the first place it means a great saving of money to the tax-payers of Alabama. That ought to commend itself to the watchdogs of the treasury upon this floor.

It furthermore guarantees, Mr. President, a speedy trial to many people that are charged with the crime of grand larceny in this State that should commend itself to the guardians of civil liberty upon this floor.

MR. FOSTER—Does that authorize justices of the peace to sentence a man to the penitentiary?

MR. FERGUSON—Not at all. By the report of the Attorney General, Mr. President, for the last preceding two years grand larceny was a predominant crime in the State of Alabama. There were 937 cases of grand larceny prosecuted in the State of Alabama for the two years ending the first of last September. By the report of the Attorney General for the two years ending September 1, 1896, there were more than fifteen hundred cases of grand larceny prosecuted in the State of Alabama. Take it year in and year out, there is an average of eleven or twelve hundred cases of grand larceny prosecuted within the confines of this State.

MR. OATES — I desire to ask the gentleman a question. Would not that amendment leave the offense of grand larceny to be tried and disposed of by justices of the peace?

MR. FERGUSON—Not at all.

MR. OATES—Do you think they should be allowed to try and dispose of the cases finally?

MR. FERGUSON—Not at all. Now the gentleman is a lawyer and he must know the law. This Section 9 as it stands now and as it has stood heretofore permits the legislature to dispense with the absolute necessity of indictment in all misdemeanor cases. Now then under that law the jurisdiction of justices of the peace is confined to certain offenses. I mean the final jurisdiction of justices of the peace are confined to what? According to my recollection I will briefly state them. To vagrancy, assaults, assaults and batteries, affrays, in which no stick or other weapon is used, cruelty to animals, public drunkenness, and perhaps one or two other little offenses.

Now, then, all the other misdemeanors of the State are not within the final jurisdiction of justices of the peace. Upon the same principle as the statute law fixes what the final jurisdiction

of Justices of the Peace is, you can not say that the Legislature will give them a final jurisdiction of grand larceny cases. I believe that is an answer to the question of the gentleman from Montgomery.

MR. PITTS—What is the punishment for grand larceny?

MR. FERGUSON—I was coming to that later.

MR. PITTS—Well tell us what it is now?

MR. FERGUSON—From one to ten years.

MR. PITTS—You propose to send a man to the penitentiary for ten years on information?

MR. FERGUSON—That will be at the election of the defendant. He will lose no rights in the premises. He can still demand his trial by jury.

MR. PITTS—Why limit this to grand larceny, why not put in all the other felonies?

MR. FERGUSON—I was satisfied this Convention would not consent to the putting in of all felonies but I believe after I have explained the purpose for which I offer this amendment the Convention will vote for it.

Now bear with me patiently just a moment longer. There is not a man upon this floor but who knows that the distinction between grand and petit larceny is shadowy, purely technical. The only thing that makes the distinction is the value of the property. Under the present statute to steal a hog worth \$5 is grand larceny, if the hog is only worth \$4.50 it is petit larceny.

MR. PITTS—What about the punishment, what is the difference between grand and petit larceny?

MR. FERGUSON—The extreme punishment for petit larceny is twelve months in jail and \$500 fine. The lowest punishment for grand larceny is one year in the penitentiary.

MR. PITTS—What is the highest penalty?

MR. FERGUSON—Ten years, but the gentleman is bound to know from his experience as a prosecuting attorney in this State for many years that the extreme punishment is rarely visited in that class of cases. I can safely say that the average punishment for grand larceny in Alabama is not exceeding three years. It would be a most extraordinary case to warrant a judge in giving more than three years' punishment for the offense of grand larceny. So I say the distinction is shadowy and purely technical. A man convicted of petit larceny loses his political rights just the same as a man convicted of grand larceny.



Now coming to the second ground to which I referred, the amendment is really in the interest of civil liberty and carrying out the principle you have adopted in Article 7 of this ordinance guaranteeing a speedy trial. If a man is charged with grand larceny he must remain in jail until the grand jury convenes and an indictment is returned into court before he can be put upon trial for it.

MR. O'NEAL—This authorizes that a grand jury can be dispensed with in proceedings and prosecutions before Justices of the Peace and such other inferior courts as may be established? Why not amend that by inserting the words "Circuit Court" before Justices of the Peace so that parties could be proceeded against in the Circuit Court on information without indictment.

MR. FERGUSON—Being a solicitor, I did not want to come in the attitude of a Greek bearing gifts, I come in the interest of economy. In the interest of speedy trials in this sort of cases. As I was proceeding to say, if a man has committed grand larceny it may have been within two or three days after the grand jury has adjourned and he will have to lie in jail six months until another grand jury convenes before he can be put on trial. That means \$9 a month, or \$54 for his feed. He may want to plead guilty. I have in my own experience known where men were committed to jail on the charge of grand larceny and they desired to plead guilty but could not do so because they had not been indicted, and they had to lie in jail many weary months until a grand jury convened before they could plead guilty. With such a provision as this amendment in the organic law those men could go before any court of competent jurisdiction and enter their plea of guilty.

MR. ROGERS—Before what tribunal would the accused be tried in those counties where there are now no courts of competent jurisdiction, when the Circuit Court is not sitting?

MR. FERGUSON—I am glad the gentleman asked that question, because in nearly every court we have a County Court that has jurisdiction of all misdemeanor cases that the Justices of the Peace have not final jurisdiction of. There is not a county in the State but what has a County Court or some court having jurisdiction of all misdemeanors, like the City Court of Montgomery, the City Court of Mobile, and the Criminal Court of Birmingham.

MR. BOONE—And the Inferior Court of Mobile.

MR. FERGUSON—And there is one at Gadsden and one at Talladega. In all these courts these men could immediately plead guilty if they desired or they could get a speedy trial without the intervention of the grand jury.

MR. JONES (Wilcox)—I am satisfied, Mr. President, that the delegates on this floor would not entertain for a moment a proposition to allow all felony cases to be proceeded against by information.

MR. FERGUSON—I do not ask that.

MR. JONES (Wilcox)—I can see no reason why an exception should be made in the case of grand larceny. There is no reason that presents itself to my mind why we should pick out that single offense and make an exception of it and say that with regard to that offense an information shall be allowed and that an indictment by a grand jury is not necessary. I do not want to take up the time of the Convention and if no gentleman cares about speaking particularly, I move to lay the amendment on the table.

A vote being taken the amendment was tabled.

MR. O'NEAL—I offer an amendment.

The amendment was read: Amend Section 9, line six, by adding the words "the Circuit or City Court, or" before the words "Justices of the Peace."

MR. LOMAX—I move the adoption of the section and on that I call for the previous question.

A vote being taken the main question was ordered and a further vote being taken the section was adopted.

Section 10 was then read as follows:

Sec. 10. That no person shall, for the same offense be twice put in jeopardy of life or limb; but courts may, for reason, fixed by law, discharge juries from the consideration of any case, and no person shall gain any advantage by reason of such discharge of the jury.

MR. LOMAX—The amendment to that section proposed by the committee is to allow courts, for reasons fixed by law, to discharge juries from the consideration of any case. I can see no reason why a court should not have the power after a jury has fully and fairly and honestly for a long time considered a case, to discharge the jury under proper conditions and circumstances that may be prescribed by law. There is no reason why a jury should be tortured by one or two men holding that jury until their patience is exhausted and until they are altogether weary and worn out. For that reason the committee thought it was best to say in this section that courts may for reasons fixed by law, discharge juries from the consideration of any case, and that this discharging the jury should not be held to have put the defendant in jeopardy.

MR. CUNNINGHAM—I desire to ask the Chairman what is meant by “limb.”

MR. LOMAX—It means an arm or a leg or an eye or a nose.

MR. BOONE—Does it not mean mayhem?

MR. LOMAX—Yes; it means his life or grievous bodily harm.

On motion of Mr. Lomax the section was adopted and Section 11 was then read as follows:

Sec. 11. That no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

On motion of Mr. Lomax this section was adopted and Section 12 was read as follows:

Sec. 12. That the right of trial by jury shall remain inviolate.

The minority report for Section 12 was also read as follows:

Minority reports:

The undersigned members of the Committee on Preamble and Declaration of Rights do not concur in the foregoing report of the committee so far as it relates to Section 12, Article I, for the following reasons:

In every relation of life in Alabama, where the result is dependent upon the opinions and decisions of a number of persons, the principle of majority rule governs, with the single exception of a verdict of a jury. Why should a unanimous verdict on a question of fact be required and enforced from a jury? A majority of one vote in this Convention either puts a proposition in the organic law, or rejects it. A majority of one vote in each House of the General Assembly creates, repeals or modifies a positive law, regardless of the magnitude of the interests involved. A majority of the Senate of the United States ratifies or refuses to consent to a treaty with a foreign power. A majority of a single vote in a half a million in a pivotal State may elect a President of the United States, change the policy of the Government and bring prosperity or ruin to seventy millions of people. And yet the majority of the committee deny that it would be sensible to apply this principle to a verdict of a jury in a civil suit at law. When a judgment is entered on a unanimous verdict, if an appeal is taken to the Supreme Court of the State it can be then finally adjudicated by a bare majority of the Justices. So in the Supreme Court of the United States, five of the Justices against four held the income tax unconstitutional; and in the same court five of the Justices held that Porto Rico was not under the Constitution, and four that it was.

Again in all ministerial and executive bodies the majority rules, and the will of the minority must give way to that of the majority when lawfully expressed. For these reasons we think that the provisions authorizing three-fourths of a jury to render a verdict in a civil case should become a part of our Constitution as it is of several other important States of the Union.

We therefore recommend as a substitute for Section 12, Article I, as reported by the committee, the following:

Art. I, Sec. 12: The right of trial by jury as heretofore enjoyed, shall remain inviolate; but in civil actions three-fourths of the jury may render a verdict.

Respectfully submitted,

Samuel Blackwell,

E. P. Wilson.

T. J. Cornwell.

MR. LOMAX—I move that the minority report be laid on the table.

MR. BLACKWELL—I hope that no such gag law will be adopted.

MR. BEDDOW—I ask the gentleman to withdraw that.

MR. LOMAX—Don't call it "gag law." I sat in my seat nearly a half a minute waiting for something and nothing was done, and then I made the motion to table. I withdraw the motion, however.

MR. BLACKWELL—As one of the minority that made this report, I desire to be heard in regard to the matter.

Mr. President, and gentlemen of the Convention, it is a fact that is known without the stating of it to this body that in a great many cases that are constantly being tried in our courts, cases of great importance that consume considerable amount of time, the tendency is growing to have mistrials, and those mistrials frequently result from one man refusing to agree with eleven others. And it is charged in many localities that influences are brought to bear to "fix" juries in order that mistrials may be had. There are cases being tried and constantly, where one party has no hope of a verdict, and yet as the law requires a unanimous jury, if that party can succeed in fixing one member of the jury he can secure a mistrial and a delay which makes it harder to have the witnesses there at a succeeding trial. As I say frequently those trials are of important cases and there are a great many witnesses and a considerable amount of time consumed and great expense incurred by the county. And yet under our present system, if you can fix

it so that one man on the jury will not agree, the whole expense has to be gone over, the whole matter retried and frequently the delay of the retrial renders it impossible to get as many witnesses present as were at the first trial.

Every gentleman here has seen the growing tendency to have mistrials. Every man knows the expense incurred. While as I say these mistrials are frequently in the larger cases, cases of great importance, any case involving \$20 may be tried by a jury and a mistrial result and in these cases more time and money, multiplying the money many times the amount involved by this requirement of a unanimous verdict.

Now the argument as presented in this minority statement prepared by Mr. Wilson from Clarke, sets forth the case very clearly. In every relation of life in Alabama as it is there stated, where the result is dependent upon the decision of a number, the principal of a majority rules. Then why should we have a unanimous verdict in civil cases?

MR. WILSON (Clarke)—You are crediting my brother's minority report to me.

MR. BLACKWELL—I beg pardon for the mistake. Why should a unanimous verdict on the question of fact be required and enforced from a trial jury?

There will be no answer to that except the statement that we have had this for a long time, that the present system is time honored, and, therefore, it ought not to be abandoned. If that principle were to govern none of the improvements of the nineteenth century that are demanded by our development ought to have been recognized and accepted. If everything of antiquity must be preserved and retained, we should have never had the splendid system of electric lighting we have today, but we ought to have retained and should now go back to the old tallow candle. We should go back to the stage coach or the ox team as a means of transportation rather than the splendid system of railways we have today. We should go back to the dug-out and the tom-tom rather than the ocean steamers of today if antiquity alone is what shall recommend a thing to us.

MR. WEATHERLY—Is not the fact that an institution is old some evidence that it is good?

MR. BLACKWELL—Some evidence that it is good, but no evidence that there is not something better, no evidence that there cannot be an improvement. Men are constantly progressing, mind is constantly developing, surroundings are constantly changing and the result is we adapt our methods to the conditions surrounding us and thus create improvement.

This system made its appearance in England soon after the Norman conquest.

Remember we are not proposing to abolish this system or to apply this amendment to criminal cases. We apply it only to civil cases.

As I say the system of a jury appeared in England soon after the Norman conquest in the Seventh Century, but at that time the jury was not required to be unanimous. Prior to the time of Edward IV. majority verdicts had been sufficient. We are not here dealing with the jury system, but simply with a unanimous verdict as to a matter of fact.

Now the jury was originally called to give evidence, and one of the reasons for having a jury of twelve was, as history shows, that that was considered the amount of evidence necessary to establish the guilt or innocence of parties to a very large extent. The jurors were taken from the immediate community in which the offense was committed and were supposed to be entirely familiar with all the facts and issues involved in the trial of the case. As civilization progressed and communities enlarged it became apparent that you got men on the jury now and then who were not competent to give evidence. But they were still legally summoned jurors and when such were brought in it became necessary to go out and get others on the outside as the jurors did not know all the facts.

MR. STEWART—Why not apply this to criminal as well as civil cases?

MR. BLACKWELL—For the same reason that was suggested by my friend Mr. Ferguson, that it is harder to accomplish a reform that is sweeping than a reform that just touches one little subject. If we had proposed to apply it to all trials, gentlemen would have risen and exclaimed. "You are absolutely proposing to try a man where his life is involved with a less number of jurors than heretofore required," so we preferred first to say to the gentlemen of the Convention that we are applying it to a \$20 trial rather than to the trial of a man for his life.

MR. CUNNINGHAM—Does the gentleman apply this only to cases involving not more than \$20?

MR. BLACKWELL—Twenty dollars and up.

MR. CUNNINGHAM—Not twenty dollars and down.

MR. BLACKWELL—Now there are many constitutions that have this provision: Colorado, Florida, Idaho, Iowa, Louisiana, Missouri, Michigan, Montana, Nebraska, New Jersey, North Dakota, Washington and Wyoming, and I think there are some others.

Some gentlemen cite us in opposition to our contention to sections of the United States Constitution, but those sections do not apply to the State courts and the State Constitutions can absolutely fix any number that they feel inclined to as a jury. The number of jurors is limited in these States I have just mentioned. In Montana in civil cases two-thirds of the jury can render a verdict. In Idaho in all cases of misdemeanors five-sixths can render a verdict. In Iowa the legislature may authorize a verdict by less than twelve jurors in any of the inferior courts of the State.

As I say, some have objected to this, claiming there is some conflict with the rights guaranteed by the Constitution of the United States. But the rights not delegated to the United States by the Constitution nor prohibited by the States are reserved to the States, and while the first six or seven amendments to the Constitution of the United States concede the right of trial by jury as they are not to be understood as restricting the powers of the States and the States if they choose can provide for trials for all offenses against the State.

MR. BULGER—Does this section reported by the Committee prevent the legislature from providing for a majority verdict?

MR. BLACKWELL. Yes. Heretofore the opinion has been that where no number was mentioned a jury meant twelve and that is unquestionably the result of everything that I have read on that subject.

MR. BOONE—Has it not been decided by the Supreme Court of the United States that the first ten amendments to the Constitution of the United States apply to Federal power and not to States.

MR. BLACKWELL—We are not talking about Federal power in this matter.

MR. BOONE—But I say that is the limitation upon Federal power and not the power of the State, so that the State has the power to make this amendment?

MR. BLACKWELL—There are cases in which juries are not used now, such as contempt of court and it is doubtful if a jury is aright in a contested election case as shown in our Alabama decisions and in damages to property taken for the public, the party is not entitled under many decisions to a trial by jury unless the Constitution of the State provides a tribunal for that purpose. The courts have said, where they have held that, that it is no more essential to have unanimity than the common law qualifications of jurors which have been continued in force—

THE PRESIDENT—The gentleman's time has expired.

MR. BEDDOW—I rise to endorse the report of the minority of this committee. As the gentleman who has just taken his seat has truly said, in all lines and in all departments of life great progress has been made except in this one feature of our government—trial by jury. A number of States have already made some progress along this line, but Alabama is still in the rear.

MR. BOONE—She has not had the opportunity.

MR. BEDDOW—This is the first opportunity she has had. As I say, great progress has been made along all lines except this. I know there are gentlemen in this Convention who will say that the trial by a jury of twelve men is a matter that comes to us from ancient days, and is consecrated by precedent and cemented by time, but all this argument has been fully answered by the gentleman who has just taken his seat.

Because a thing is old is no reason why improvement cannot be had. Under that argument, the boy was right who was going to mill with a bag of corn to be ground and in one end of the bag he had corn and in the other a rock. He asked why he didn't put a peck of corn on the other side and carry a half bushel instead of just one peck. He said his father always carried a rock in one end of the bag and corn in the other, and he was going to keep that up.

This is the argument that the opposition used. Now we have some great men and some good men who are advocating this doctrine that a majority—even a majority of the jury—shall be able to render a verdict. One of our Justices of the Supreme Court of the United States, David J. Brewer, in a recent lecture to the students of Yale College advocated the abolition of the system of unanimous verdicts by juries.

Judge A. B. Grace shows the ridiculousness of requiring unanimity in a jury. He says "This is an error that should not continue to exist. The majority system would practically remove the temptations of bribery. Under our law now one juror can dictate to all of the eleven others or make a mistrial. All a litigant now has to do is to fix one juror. Then he can have one of these mistrials, but with the majority system, he would have to bribe six jurors instead of one to even get a mistrial, which would always most surely leak out, and to get a verdict he would have to bribe seven jurors, and to keep his bribe a secret would be practically impossible."

Then he calls attention to facts that show the impracticability and the ridiculousness of enlightened States continuing the system of unanimous juries. He says "In every relation of life in America where the result is made to depend on the opinions and decisions of a number of persons, the principle of majority rule has been adopted with the sole exception of the verdict of a jury."



A majority of one vote in each house of a General Assembly of Congress suffices to create, repeal or change a positive law, regardless of the magnitude of the interests involved, as in the case of a currency bill, a tariff bill or a declaration of war.

A majority in the National Senate ratifies or refuses to consent to a treaty with a foreign power.

A majority of a single vote in half a million in a pivotal State may elect a President of the United States, change the entire policy of the Government, and bring prosperity or ruin to 70,000,000 of people. Yet lawyers, good lawyers, honest and patriotic lawyers, will roll their eyes in horror at the very suggestion that it would be sensible to apply the same principle in deciding a replevin suit of a "tickey" calf or a "pestle-tiled pony," and yet again this calf or pony case when it has ascended by appeal from the Justice of the Peace court to the Circuit Court, and thence to the Supreme Court of the State, is decided by a bare majority of the judges, if they should happen to differ."

Mr. President and gentlemen of the Convention, this is no new question. It has been agitated for a hundred years. I hold in my hand Forsyth's History of Trial by Jury, a man known to the entire legal fraternity.

A hundred years ago it was advocated by men like those, that it was ridiculous to adhere to the old principles of unanimity in the verdict of a petit jury.

MR. WEATHERLY—Will the gentleman allow me to ask him a question?

MR. BEDDOW—I decline to yield for questions. I have but ten minutes and I want to talk during that time. The gentleman no doubt will have an opportunity to answer what I have to say.

On page 245 of Forsyth's History of Trial by Jury, he says: "In a valuable note in his Middle Ages, Mr. Hallam, speaking of the grand principle of Saxon polity, the trial of facts by the country says, from this principle, except as to the preposterous relic of barbarism, the requirement of unanimity, may we never swerve—may we never be compelled in wish to swerve."

He like myself believed in the verdict of a jury, and it is one of the greatest institutions that the country was ever blessed with, and by this improvement upon it, there can be nothing on earth that can replace it, but with it as it is, it permits one man to corrupt the jury and to throttle the will of eleven.

THE PRESIDENT—The gentleman's time has expired.

A DELEGATE—I move that the gentleman's time be extended for ten minutes.

The motion was carried.

MR. BEDDOW—I thank the gentleman. Under the present system, all that has to be done is that some friend to some lawyer be upon the jury and he will decide with him right or wrong. Some person who has some interest in it, apart from justice and right, may purchase him before he enters upon the trial of the cause. You cannot tell me that is not the case. We see it every day in the week. In Birmingham not long ago there sat upon a jury a man who had said before the evidence had been heard, and before the charge of the court had been given to the jury, that he had come there for the purpose of hanging the jury, and that he has his money in his pocket, and he was going to sit there to make it a mistrial, unless the case was decided according to the way he desired it decided. The case went to trial, and in that self same case, that man did hang the jury and produce a mistrial, when there were eleven men who had agreed upon the verdict. You tell me that in an enlightened age like this, that cases like that should be permitted? That it should be within the power of such persons to prostitute justice? I say nay, nay, the time has come when we should rise up in our might and purify the jury system, by putting it beyond the reach of corrupt practices to produce mistrials, when justice is on the one side or the other.

Mr. Forsyth further says: “when the House of Lords sit as a court of appeal, or as a criminal court to try a peer or in the case of impeachment of a commoner, a bare majority of one is sufficient to determine the judgment, and it may be fairly asked why the rule should be different for twelve jurors, and why if there be a single dissentient amongst them, no verdict can be given?”

And gentlemen of the Convention, as early as seventy years ago, a commission in England, the place we get our jury system, investigated the question of the unanimity of the verdict of the jury, in the year 1830, and in their report at that time they say, “it is essential to the validity of a verdict that the jury should be unanimous, and regularly they are not allowed to be discharged unless by the consent of the parties, until such unanimous verdict has been returned. It is difficult to defend the justice or the wisdom of the latter principle. It seems absurd that the rights of a party in question of a doubtful and complicated nature, should depend upon his being able to satisfy twelve persons that one particular state of facts is the true one. As it is notorious that upon such questions a body of men so numerous are often found to differ irreconcilably in their views, it is obvious that the necessity of returning in every case a verdict, and a unanimous one, before they separate, must frequently lead to improper compromise among the jurors of their respective opinions. There is reason also to apprehend that where any of them happen to be actuated by partial motives, it must tend to produce a corrupt verdict. Indeed no one can

have been much conversant with courts of justice, without frequently having heard the remark, where the verdict has been very long in suspense, that one or other of the contending parties has a friend upon the jury."

And acting upon that report, and in the light of the present age, numerous States of this Union have fallen into line and have adopted the salient feature that was recommended by that commission seventy years ago. In concluding his remarks in this chapter, the author says, "the time is fast approaching, if it has not already come, when trial by jury, like every other part of our legal fabric, will become the subject of the public criticism, and I feel persuaded that then it will be found impossible to justify or retain a rule which is both opposed to justice and expediency."

Now, Mr. President, and gentlemen of the Convention, in my county there are at least 25 per cent. of the cases that go to the jury that result in a mistrial. It amounts to thousands and thousands of dollars to be paid out by the tax payers of this State, for no other purpose than of perpetuating a system that has been condemned by the wisest and best men that this or any other nation have ever known. Why should we stand back? We are here for the purpose of amending the Constitution, making it better, building it up, increasing its field of operation, and perfecting a system of law and of justice.

If you will make this amendment to this trial by jury, by reducing it in civil cases to three-fourths, instead of the unanimity rule, it will produce great good to your State. It will prevent fraud and corruption in the temples of justice, and under its beneficent influences this State will continue to grow and to prosper and the temple of justice will not be prostituted once where it is a thousand times at present.

MR. BOONE—Mr. President and gentlemen of the Convention, I wish to occupy your time only about two or three minutes further, on one suggestion that has not been made in the arguments of the gentlemen that have preceded me. Nearly all of the reasons have been shown why the minority report should be adopted, but one, which it occurs to me is of very great importance, showing, as it does, the system of jurisprudence in Alabama, where certainly as much property, as many rights are involved. This applies only in civil cases as proposed by the minority report, and if the arguments of the opponents of the measure are sound, why should a Chancellor have the power to decide questions involving thousands of dollars' worth of property in equity suits and pass on questions of fact, which are often the main questions in the case, and when an appeal is taken from his decree to the Supreme Court, where the judges also pass upon the facts, should the majority of those judges, three against two, affirm or reverse that decree?

Now let us look at the progress of the law in Alabama in the equity field: For years it was the law in this State that when the Chancellor rendered a decree on a question of fact, and an appeal was taken to the Supreme Court of Alabama, there was a presumption, mind you, a presumption, indulged in by the Appellate Court in favor of the regularity and the correctness of the decree below. But the Legislature saw there was no reason for that, there was no sense in indulging in that presumption, and that was stricken down and the Supreme Court now tries the case when it comes up de-novo. Now, why should this one man, as some one has said on this floor today, this judge, who is but a man, and, as Stephen J. Field said in an opinion once in a case before the Supreme Court of the United States, because he sat on the bench, he did not fail to have the senses, he saw, he heard, and the sentiments, the same views, that a man had, were there with him. He tried to be perfectly impartial and to smother it all out, but he did not cease to be a man. Now, why should the Chancellor be able to pass on a question where there are hundreds thousands of dollars involved, and his decision be affirmed by a bare majority of a court, when in a damage suit against a railroad company you have got to have the unanimous verdict of the jury? I say, gentlemen, that we are in line with this amendment, with progress, with the thoughtful men of all nations, and we should not claim that all the wisdom of the Union is here in Alabama; but we can profit by what has been found to be good in other States, and there is not a single State which has ever adopted this proposition (some of them having adopted it more than forty years ago), that have ever abandoned it, and I do hope that the Convention will adopt the minority report.

MR. GRAYSON—I desire to offer an amendment.

The amendment was read as follows: Amend by striking out "three-quarters" and insert "five-sixths."

THE PRESIDENT—The question will be upon the amendment proposed by the gentleman from Madison to the amendment proposed by the minority report.

MR. GRAYSON—This is an entirely new departure in our courts and to require a three-quarters majority verdict may be too radical a change. I am satisfied, though, it will be to the best interest of the State, and to the best interests of the litigants, not to require a unanimous verdict, because it so often results in mistrials, brought about by corruption, but the change to three-fourths is too great, and therefore I move this amendment, making it five-sixths. In that case it will require ten jurors, whereas under the amendment of the minority of the committee, it would require only nine.

MR. BAREFIELD—I move to lay the amendment, and the report of the minority of the Committee on the table.

MR. REESE—I ask for a division of the question.

THE PRESIDENT—A division of the question is called for. This question will be upon the motion to table the amendment offered by the gentleman from Madison.

The motion to table was carried.

THE PRESIDENT—The question recurs upon the amendment offered by the minority report.

MR. BLACKWELL—Upon that I call for the ayes and noes.

THE PRESIDENT—The ayes and noes are called for. The question is, is the call sustained.

The requisite number rising the call was sustained.

THE PRESIDENT—As many as favor the motion to table the minority report will vote aye and those opposed no, as their names are called.

During the call of the roll:

MR. JONES (Montgomery)—I am paired with the delegate from Mobile (Mr. Smith); if he were present he would vote aye and I would vote no.

MR. WILSON (Clarke)—I am paired with the delegate from Mobile (Mr. Pillans.) If he were here he would vote no and I would vote aye.

The call of the roll resulted as follows:

#### AYES.

Messrs. President,	Jackson,	Opp,
Barefield,	Jones, of Hale,	O'Rear,
Beavers,	Jones, of Wilcox,	Parker (Cullman),
Bethune,	Leigh,	Parker (Elmore),
Byars,	Lomax,	Porter,
Cardon,	Long, of Walker,	Rogers (Sumter),
Carnathon,	Lowe, of Jefferson,	Sanders,
Cunningham,	Lowe, of Lawrence,	Spragins,
Espy,	Martin,	Stewart,
Foster,	Maxwell,	Thompson,
Glover,	Merrill,	Waddell,
Graham, of Talladega,	Miller (Wilcox)	Walker,
Henderson,	NeSmith,	Weatherly,
Hood,	Norman,	Willet.
Howze,	O'Neal (Lauderdale),	

Total—43.

## NOES.

Ashcraft,	Grayson,	Pitts,
Banks,	Haley,	Reese,
Beddow,	Hodges,	Reynolds, of Henry,
Blackwell,	Inge,	Rogers (Lowndes),
Boone,	Jones, of Bibb,	Sanford,
Brooks,	Kyle,	Selheimer,
Bulger,	Macdonald,	Smith, Mac. A.,
Burns,	Malone,	Smith, Morgan M.,
Chapman,	Moody,	Spears,
Cobb,	Murphree,	Watts,
Cofer,	Oates,	White,
Dent,	O'Neill, of Jefferson,	Wilson (Wash'gton),
Eyster,	Palmer,	Winn,
Fletcher,	Pearce,	
Foshee,	Pettus,	
Total—43.		

## ABSENT OR NOT VOTING.

Altman,	Greer, of Calhoun,	Norwood,
Almon,	Greer, of Perry,	Phillips,
Bartlett,	Handley,	Pillans,
Browne,	Harrison,	Proctor,
Burnett,	Heflin, of Chambers,	Renfro,
Carmichael, of Colbert,	Heflin, of Randolph,	Reynolds (Chilton),
Carmichael, of Coffee,	Hinson,	Robinson,
Case,	Howell,	Sanford,
Coleman, of Greene,	Jenkins,	Searcy,
Coleman, of Walker,	Jones, of Montgomery,	Sentell,
Cornwall,	Kirk,	Sloan,
Craig,	King,	Smith (Mobile),
Davis, of DeKalb,	Kirkland,	Sollie,
Davis, of Etowah,	Knight,	Stoddard,
deGraffenreid,	Ledbetter,	Tayloe,
Duke,	Locklin,	Vaughan,
Eley,	Long, of Butler,	Weakley,
Ferguson,	Lowe, of Jefferson,	Whiteside,
Fitts,	McMillan, of Baldwin,	Williams (Barbour),
Freeman,	McMillan (Wilcox),	Williams (Marengo),
Gilmore,	Miller (Marengo),	Williams (Elmore),
Graham, of Montgomery,	Morrisette,	Wilson (Clarke),
Grant,	Mulkey,	

By a vote of 43 ayes and 43 noes the motion to table was lost.

THE PRESIDENT—The question recurs upon the adoption of the minority report.

MR. BURNS—An amendment.

**THE PRESIDENT**—The gentleman from Montgomery has the floor.

**MR. LOMAX**—I yield for an amendment.

**MR. BURNS**—It is too late to call for a verification of that last vote I suppose?

**THE PRESIDENT**—It is too late now.

**MR. SANDERS** — I rise to make a motion to adjourn. I think that a question of so much importance should be voted upon when more delegates are present. I therefore move that the Convention do now adjourn.

The motion to adjourn prevailed.

Leaves of absence were granted to Mr. Carmichael (Coffee) for today; Mr. Stoddard for Monday and Tuesday on account of the illness of his father, Mr. Opp for Monday, Mr. Norwood for today, and Mr. Cofer for Monday.

**MR. PROCTOR**—I ask unanimous consent to submit the report of the Committee on Journal.

There being no objection, the report was read, stating that the Journal for the thirty-seventh day of the Convention had been examined and found to be correct, and the same was adopted.

And thereupon the Convention adjourned until 9:30 o'clock, a. m. Monday.

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## THIRTY-NINTH DAY

MONTGOMERY, ALA.,  
Monday, July 8th, 1901.

The Convention met pursuant to adjournment, was called to order by the President and opened with prayer by the Rev. Mr. Howell, as follows:

O Lord God, our Heavenly Father, we are brought under renewed obligations to Thee, to praise Thy great name, for that kind providence that has been over us and above us, that our health and lives have been preserved, and we are permitted this morning to assemble here, to prosecute the business pertaining to this work. Accept the gratitude of our hearts, and the praises of our lips, for all the blessings Thou hast vouchsafed to us. And we invoke Thy presence this day to give us divine light and wisdom, to transact the business pertaining to this day, in the fear of God, and in the interest of our commonwealth. Bless the homes and families of these Thy servants during their absence. May

their lives, and their health, be precious in Thy sight, and we pray Thee to command Thy blessings upon all the people. May Thy kingdom come in all of its righteousness and purity, and pervade the hearts and lives of all Thy people. Forgive us our sins, and prepare us for every good word and work, and may we so live as individuals and as representatives, that when the end of life shall come with us, we may have the consciousness of knowing we have done the best we could. May we meet Thy divine approbation at last. May we so have lived that Thou wilt say to us, well done, good and faithful servants, and in Heaven's bright and happy home be gathered at last, and we pray forever in Christ our Redeemer, Amen.

Upon the call of the roll, ninety-five delegates responded to their names.

The report of the Committee on Journal was read, stating that the journal for the thirty-eighth day of the convention had been examined and found to be correct, and the report was adopted.

Leaves of absence were granted, as follows: Indefinite leave for Mr. H. W. Cardon, on account of sickness, Mr. Brown of Talladega for Monday and Tuesday, Mr. Inge of Hale for today, Mr. Moody for today on account of sickness, indefinite leave for Mr. Studdard on account of sickness in his family indefinite leave for Mr. O'Rear on account of sickness, Mr. Tayloe for today, Mr. Coleman (Greene) for today, Mr. Locklin for today.

The roll of delegates was called for the introduction of ordinances, resolutions, etc.

Ordinance No. 413 by Mr. Burns:

Amendment to article on taxation.

Amend by adding—section or proviso—That no license tax shall be required by State, county or municipality of any veteran or ex-soldier of the Civil War of 1861-65, who is unable to perform manual labor, and whose taxable property does not amount to the exemptions allowed by this Constitution. Provided, That this ordinance shall not apply to the sale of malt or spiritous liquors.

Referred to Committee on Taxation.

MR. BURNS—I am requested by several delegates to offer a resolution which has been sent to the clerk's desk, and I shall move a suspension of the rules in order that it may be passed.

The resolution was read as follows:

Resolution No. 231 by Mr. Burns:



Resolved, That Resolution No. 184, introduced by Mr. Cunningham, proposing to regulate leaves of absence, be and is hereby rescinded.

MR. BURNS—That resolution has reference to the resolution offered by the gentleman from Jefferson, a few days ago—

THE PRESIDENT—The question is not debatable.

MR. BURNS—I was going to move a suspension of the rules. Upon a vote being taken the rules were suspended.

THE PRESIDENT—The question is on the passage of the resolution.

MR. BURNS — I suppose each delegate here understands what resolution the present resolution has reference to. The other resolution passed by the house I consider not at all complimentary to the members of the House, that they shall not be entitled to pay for services unless absent on account of sickness. I think every delegate on this floor should be the judge for himself of the necessity, and should answer back to his constituents and not to the members of this Convention, for any leave of absence he may desire. I hope that the resolution will pass.

MR. COBB—Just one word. I believe that the passage of that resolution the other day was an error, not only for the reason just given, but for the additional reason, there are causes which call men away from this Convention other than sickness of themselves or their families, and which justifies their going. They only go for a short time. They have some important matters to look after, and no harm comes because of their absence. There is always enough here to go on with the business and not enough members leave at one time to prevent the business of the Convention being transacted. A man that wants to go, who is called away on necessary business, generally regards the time and sees when he can go without any danger to any pending matter before the Convention, and I think that it is a matter that ought to be left just as it was before the passage of the original resolution, and I support the proposition now pending before the House.

MR. CUNNINGHAM—The propriety of being paid for services not rendered is a matter of individual conscience. I presume that any member of this Convention could refuse when granted leave of absence for business reasons, to accept the \$4 a day, and in that way satisfy what conscientious scruples he may have upon the question.

But as a matter of business I believe that this Convention has jurisdiction of this question, and I believe it should not permit a delegate to go home to attend to his private business and at the same time receive his per diem. We are not on a salary by the month. We are here on a per diem, and for that reason I believe

that the resolution introduced by myself, about two weeks ago, is a good resolution.

MR. JENKINS—I would like to ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield to the gentleman from Wilcox?

MR. CUNNINGHAM—Certainly.

MR. JENKINS—Does he not think as a matter of fact we could get along faster when a fewer number is here than when there is a full attendance.

MR. CUNNINGHAM—I am very glad the question has been asked, because that has been privately urged as a reason for the repeal of this resolution.

MR. WHITE—Will the gentleman allow a question?

MR. CUNNINGHAM — The gentleman will wait until I answer the other question. If it had been in the interest of the people of the State of Alabama to have a smaller number in this Convention, the probability is that those who are responsible for the enabling act would have put a smaller number in it. Therefore I believe that the gentlemen who have been elected to this Convention should come forward and do their duty, unless there is a providential reason why they should not do it. That is my honest conviction upon the subject.

MR. WHITE—Does the gentleman yield for a question?

MR. CUNNINGHAM—Certainly.

MR. WHITE—The gentleman from Wilcox asked if you did not think we would get along better without some of the members here——

MR. JENKINS—I rise to a question of privilege. I did not say that, but I said that we would get along faster.

MR. WHITE—Faster, yes. I would ask the gentleman from Jefferson if it is not a fact that the gentlemen who have business at home are probably the most desirable members?

MR. CUNNINGHAM—Mr. President, I must say that I am not competent, nor is it my duty to pass upon the efficiency of individual members of this Convention, of those who are present, or of those who are absent. But I will say this much, that it strikes me that in the discharge of this very great and sacred duty, that we have assumed, we should do so or at least not accept compensation for our negligence or indifference. I do not care to

prolong the discussion. I move to lay the resolution on the table, and on that I call for the ayes and noes.

The requisite number of members not rising, the call was not sustained.

THE PRESIDENT—The question is on the motion to table the resolution.

Upon a vote being taken the motion was lost.

MR. OATES—I do not wish to prolong the time consumed with this matter at all, or to take any active part in the discussion, but I desire to say that the resolution which was offered by the delegate from Jefferson and adopted is not unprecedented at all. It was once found that absenteeism was so great in the House of Representatives of the United States, that a rule of that kind was adopted. I recollect distinctly when I was away from there, canvassing in this State for Governor, that I lost my pay. I did not get any during that time, and I am inclined to think it is a very healthy rule. If a man cannot discharge the duty of an office, he ought to resign and get out. That is the true doctrine. If he gets compensated, if it is worth anything to him, he ought to stay and perform the duties. Wherever a gentleman is called away by sickness of his family, or himself, under the rule adopted, I believe it does not affect his compensation at all. But wherever he has business of such importance as to draw him away from here, then he can well afford to lose the little \$4 a day he would otherwise get, and when he don't do anything to earn it I don't think he ought to get it.

MR. REESE—I move the previous question.

MR. O'NEAL—There is no second to the motion.

MR. COBB—I ask the gentleman to withdraw the motion.

THE PRESIDENT—Does the gentleman yield?

MR. REESE—Yes sir.

MR. COBB—Just a moment. I want to say that I am not affected by this, so far as I am personally concerned, and it is not on that account I make the point that I now do before the Convention, but the gentlemen are in error in supposing that because a man goes home on a sudden call, it may be on some private business, that he is not discharging his duty as a delegate to this Convention. It does not necessarily follow that he is avoiding his duty when he goes home for a day. The mere question of losing three or four dollars, supposing a man's house should burn up, as a gentleman suggests to me, or a matter of that sort calls him away, it struck me at the start, and strikes me now, as rather too small a matter to be dealt with by this Convention in this

way. It is not the matter of a little amount, which no delegate probably cares anything about, but it is a kind of reflection upon the members of this Convention, confessedly a patriotic, conservative and faithful body of men. Therefore I think this resolution ought to be rescinded, and I want to say when my friend (Mr. Oates) failed to get his pay in Congress, he did not do so because it was demanded of him, but because he voluntarily gave it up. Because it was expressly ruled in Congress that when a man was absent by leave, or absent any way, his pay could not be taken from him, except by his consent. It was so ruled by the Speaker. If you remember, when Bailey made the fight—

MR. OATES—Yes, I know the Speaker who ruled so there, Thomas B. Reed.

MR. REESE—I now renew my motion.

THE PRESIDENT—Does the gentleman call for the previous question? The Convention seems ready to vote on the resolution.

MR. REESE—I withdraw the motion, then.

MR. CUNNINGHAM—I call for the ayes and noes and I hope the Convention will sustain the call.

MR. BULGER—I make the point of order that the call for the ayes and noes was made and not sustained.

THE PRESIDENT—On the motion to table. A call is made for the ayes and noes; the question is, is the call sustained?

THE PRESIDENT—On the motion to table. A call is made for the ayes and noes; the question is, is the call sustained?

A sufficient number not rising, the call was not sustained. Upon a vote being taken, the resolution was thereupon adopted.

MR. GREER (Calhoun)—I rise to a question of personal privilege. When I left Wednesday afternoon I paired with a gentleman, Judge Stewart from Perry, in favor of the Weakley amendment. I have been informed he is not present, but that he stated to the Convention he was paired with some member and did not know who, and he declined to vote. I would like, Mr. President, to be recorded as being paired in favor of the Weakley amendment.

MR. GRANT—I have been requested to ask that this petition be read and referred to the Committee on Printing, etc.

The motion to read the petition was carried and the same was read as follows:

Anniston, Ala., July 3, 1901.

To Calhoun's Representatives in Constitutional Convention :

Gentlemen—In view of the contemplated printed matter to be given out by the Constitutional Convention now in session, we, the printers of Anniston Typographical Union, No. 419, under International rule, submit the following resolutions for your consideration :

Resolved, first, that we request our representatives in Convention to insist that the Allied Printers' Union Label be used in the execution of all printed matter given out by said Convention, and,

Be it further resolved, That every effort put forth by our representatives to this end will be considered as a token of high respect to the laboring men ; and

Be it further resolved. That such action on the part of the Constitutional Convention would be not only an encouragement to the laboring element in the State, but would be the means of strengthening unionism and co-operation among working men ; and we will regard such action as a fitting recognition of the right of labor and be a guarantee that our representative men recognize the laboring element of our population and their value to the State.

J. H. Church,  
J. K. Smith,  
J. F. Ruddisill,

Committee.

T. A. Moore, President,  
J. R. Ayres, Secretary,

Referred to Committee on Stationery, Printing and Incidental Expenses.

MR. SPRAGINS—I send a petition to the clerk's desk and ask that the body of it be read and the petition referred to the Committee on Taxation.

The petition was as follows :

Petition No. 15, introduced by request, by Mr. Spragins of Madison :

We, the undersigned business men and citizens of the city of Huntsville, Madison county, most respectfully petition our delegation to the Constitutional Convention, Hons. R. E. Spragins, R. W. Walker, A. S. Fletcher and J. W. Grayson and the members of the Constitutional Convention, not to enact any law in our Constitution for the collection of a privilege tax. We believe that such a tax is unjust.

J. A. Anderson & Co., W. L. Halsey, Van Valkenberg & Matthews, Luke Matthews, treasurer; Huntsville Cotton Mills, J. A. Wallace, Jr., D. C. Monroe, W. T. Chofin, J. W. Kingler & Co., Cantrell & Young, George T. Marsh, agent Merrimack Mfg. Co., Huntsville Furniture & Lumber Co., James A. Ward, Jr., secretary; W. H. Rowe Knitting Co., by Charles E. Shaver; Dallas Mfg. Co., by J. S. Davidson, superintendent.

Referred to Committee on Taxation.

On the call of the standing committee, the chairman of the Committee on Executive Department submitted the following report:

The report and ordinance were read as follows:

MR. PRESIDENT—The Committee on the Executive Department, to whom was referred the resolution introduced by the gentleman from Montgomery (Mr. Watts) as to the advisability of framing and reporting an ordinance to provide for the succession in the office of Governor, have had the subject under consideration and direct me to report the accompanying ordinance, the passage of which the committee respectfully recommend.

Thomas G. Jones, Chairman.

An ordinance to provide for the succession in the office of Governor, in event of his death, resignation, removal from office, disability, or absence from the State, occurring prior to the next election of a President of the Senate and Speaker of the House.

Section 1.—Be it ordained by the people of Alabama, in Convention assembled, that in event the Governor dies, resigns, is removed or under disabilities, or absent from the State for more than twenty days prior to the next election of a President of the Senate and a Speaker of the House, the power and duties of the office shall devolve in the order named, upon the Honorable D. J. Meadors, the last President pro tem of the Senate; next upon Hon. A. M. Tunstall, the last Speaker pro tem of the House; next upon the Attorney-General; next upon the Auditor; next upon the Treasurer; but the powers and duties of the person exercising the office of Governor in lieu of the Governor shall cease and terminate whenever a President of the Senate and a Speaker of the House shall be elected at the next meeting of any General Assembly.

Sec. 2.—Be it further ordained, that this ordinance shall go into effect immediately.

MR. JONES—If I am in order I will state that this is an ordinance looking to what might be an emergency. We have no president of the Senate and no Speaker of the House, and the

committee reported an ordinance to cover a contingency of that sort, and it covers it only until the General Assembly meets, when there will be a president of the Senate and Speaker of the House. That is the reason they have provided it should become effective immediately.

THE PRESIDENT—The rule will require it to lie on the table and be printed.

The Committee on Executive Department submitted a further report and resolution as follows:

Mr. President, the Committee on Executive Department direct me to report the accompanying ordinance for the relief of E. L. May and to recommend its passage.

Thomas G. Jones, Chairman.

An ordinance for the relief of E. L. May.

Be it ordained by the people of Alabama, in Convention assembled, that the sum of \$35 be and the same is hereby appropriated to pay E. L. May for his services as clerk for attending the meetings of the Committee on the Executive Department, and transcribing the article on the Executive Department as finally adopted and reported by the committee.

THE PRESIDENT—The ordinance will lie on the table and be printed.

MR. JONES (Montgomery)—I do not think it is necessary to print it, unless somebody desires to have it printed.

THE PRESIDENT—The rule requires it shall be printed.

THE PRESIDENT—The next order of business is the report of special committees, of which there are none, and next unfinished business, the report of the Committee on Preamble and Bill of Rights.

MR. PETTUS—I move to reconsider the vote by which Section 10 of the report of the Committee on Preamble and Declaration of Rights was passed. I desire to state, Mr. President, that it ought to be either amended or stricken out in the second and third lines.

In the old Constitution Section 10 reads "that no person shall twice be put in jeopardy of life and limb," and the Convention adopted on Saturday and additional clause which says courts may for reasons fixed by law discharge juries from the consideration of any suit, and no person shall gain any advantage by reason of such discharge of the jury.

MR. WATTS—I rise to a point of order.

THE PRESIDENT — The gentleman will state the point of order.

MR. WATTS—That this Convention has under consideration Section 12, and about to take a vote whether or not the minority report shall be adopted.

MR. PETTUS—Under the rules a motion to reconsider can be offered at any time within one hour after the reading of the Journal.

THE PRESIDENT—Rule 27 says “when a vote has passed, except on the previous question, or on a motion to lay on the table, or to take from the table, it shall be in order for any delegate who voted with the majority to move for a reconsideration thereof, on the same day, or within the morning of succeeding day, and such motion, if made on the same day shall be considered immediately after the approval of the Journal on the day succeeding that on which it is made,” etc.

The chair will inquire if the gentleman voted in favor of the adoption?

MR. PETTUS—There is no record of the vote, and I don't remember just now how I voted, and I submit that where there is not an aye and no vote anybody can make a motion to reconsider.

THE PRESIDENT—The ruling of the chair has been the other way.

MR. LOMAX—If the gentleman from Limestone is not able to state how he voted I submit his motion to reconsider is not in order.

MR. WILLIAMS (Marengo)—I voted aye on the proposition, and I now move to reconsider the vote by which Section 10 was passed.

THE PRESIDENT—The chair will make a ruling that delegates can understand. The chair ruled the other day on a similar question that while the rule is as referred to by the gentleman from Limestone, it is the opinion of the chair and the general parliamentary authorities hold that a motion to reconsider must be made by one who voted in favor of the proposition, and it must affirmatively appear that he did so vote.

MR. WILLIAMS (Marengo)—I voted aye on the passage of the section, and I now desire to make a motion to reconsider the vote by which Section 10 was passed on Saturday, and I yield the floor to the gentleman from Limestone.

MR. PETTUS—The old Constitution provides that no person shall twice be put in jeopardy of life and limb, and I see no



reason why an additional clause should be adopted authorizing the courts to discharge jurors from the consideration of any cause, and if the section is adopted that could be done over the protest of the defendant as the practice is and as has been stated by the gentlemen who have advocated the adoption of the section. When a court now discharge the juries it is by the consent of the defendant, and the defendant will not insist on forcing a verdict in an improper case. I think this should be an improper case. I think this should be amended so that the jury may be discharged on the request of the majority of the jury as suggested by one of the delegates, or else it ought not at any rate to be done over the protest of the defendant. And if the amendment is not adopted, making it necessary for the majority of the jury to concur in the request there ought to be a time limit, and it ought not to be in the discretion of the judge to discharge the jury until it has been sitting for at least the limited time, and has made an earnest effort to agree on a verdict.

MR. O'NEAL (Lauderdale)—This would apply to civil as well as criminal cases?

MR. PETTUS—I am speaking of the effect it has on criminal cases, and I don't think the other is a matter of so much importance. As the rule now stands, I can see there may be cases in which a hardship may be worked upon the jury, that a defendant might insist on keeping a jury for a long time on account of the will of one of twelve men on the jury, but it seems to me that he would do so at his own risk, and that he would prefer a mistrial and to take his chances again before another jury, but as this section now stands, as adopted Saturday, reported by the committee, the judge is authorized to discharge the jury before they have made an attempt to reach a verdict, and it seems to me that it is rather too much arbitrary power to give him in this matter, and it ought to be limited so the jury will not be discharged before a certain time has elapsed after the case has gone to the jury, or ought to be done at the request of a majority of the jury sitting on the case, and I do not see, I do not know of any instance of abuse under the old section. It seems to me after the case goes to the jury and the jury is discharged when they might have reached a verdict acquitting the defendant that he has been twice put in jeopardy under this section. While I have no argument to make on it, I submit it is a dangerous innovation and this Convention ought to reconsider the section for the purpose of striking it out, and leaving it as it was in the Constitution of 1875. As the law is now, it may be, as I said before, that it sometimes works a hardship on the jury. But if you leave it as it is now in this section it may work a hardship on the defendant, and the defendant's interest ought to be protected and safeguarded, as is the policy of our laws.

MR. JONES (Montgomery)—Mr. President, I am in hearty sympathy with the purpose which the committee had in view in giving the judge some power to discharge a jury in a criminal case, but I am in favor of reconsideration, because I think on a reconsideration we may better the article. Now it is known in United States courts the judge can discharge the jury whenever he sees proper in a criminal case. The rule has been otherwise in Alabama, but we know that judges are human, like the rest of us. I do not think the judge ought to have it in his power simply if the jury stays out beyond what he thinks they ought to, to say to them: "I will discharge you; you have had time enough to find a verdict." I am in favor of reconsidering it for the purpose of an amendment, that the judge on the request of six of the jurors may discharge them. I think that would accomplish everything the committee had in view and be an improvement on the present.

MR. LOMAX—Will the gentleman allow me to call his attention to the fact that the language is that the "court may for reasons fixed by law, and that leaves it to the Legislature to say what shall authorize the discharge of a jury; the fixing of the particular reason for the discharge is a matter of detail that ought not to go into the Constitution.

MR. JONES—I see the force of that, but I would not wish the Legislature to pass on it at all. My idea would be that whenever half of the jury ask to be discharged and the judge in the exercise of his judicial functions, thinks they ought to be discharged, to give him the power to do it. It will be very difficult to frame reasons which would cover cases satisfactorily, and I think it will be better left to the conscience of the judge on the request of six jurors.

MR. WEATHERLY (Jefferson)—May I inquire if this would become operative without legislative action?

MR. LOMAX — No; the Legislature would have to make provision.

MR. WILLETT—This seems to me to be a dangerous innovation. I agree with what the gentleman from Limestone says. The Legislature may prescribe for what reason a jury may be discharged when they are apparently not going to agree, but the judge may act arbitrarily, and what is the provision that immediately follows, however arbitrarily that judge may act, however much the defendant may object to the discharge of that jury, whatever reason the Legislature may prescribe whereby the judge may discharge that jury, he may go out and get reasons of his own and act arbitrarily, and it expressly says no one shall gain any advantage by reason of the discharge of the jury. Isn't that a dangerous Constitutional provision, isn't that dangerous in this

State to say that a judge shall act as he pleases, that the Legislature can prescribe reasons, and yet with the defendant sitting there protesting against the discharge of jury trying him for his life or liberty that the Constitutional provision says that he shall not take advantage of the fact of the arbitrariness of the judge or get the benefit of it in the supreme court. It is too dangerous and I am in favor of the motion to reconsider.

MR. WATTS—It seems to me that the gentleman totally misapprehends this section. The judge under this section would not have a right to act arbitrarily. It is distinctly provided in the section that he shall only discharge the jury under rules prescribed by law, therefore he would be compelled to follow the rule prescribed by law.

MR. WEATHERLY (Jefferson)—Would it not be within the power of the Legislature under the clause as passed to fix a rule whereby a judge could pass a case and it be left within his discretion so that no appeal would lie from his ruling? Is it in the power of the Legislature under that clause to so fix it that there would be no appeal from the discretionary action of the judge?

MR. WATTS — Yes, I think the Legislature would prescribe rules for the discharge of juries and if the judge followed the rules and discharged the jury his action would be affirmed, but I don't think the Legislature would prescribe that there should not be an appeal from the action of the judge in any matter that came before him. Now as to the point of my friend from Pickens that the latter part of the clause is dangerous. I think he misinterprets that. It is not, as he seems to construe it, that anybody shall be deprived of a right by the discharge of this jury, but the language is that no one shall gain any advantage by the discharge of the jury that is, the action of the judge shall not benefit the plaintiff or defendant, but that the case shall go on and be tried again and the judge shall not discharge the jury.

MR. O'NEAL—Under this provision the Legislature could provide that the judge could discharge the jury upon the request of six as suggested by the gentleman from Montgomery?

MR. WATTS—Certainly.

MR. O'NEAL—And that against the protest of the defendant?

MR. WATTS—Yes.

MR. O'NEAL—Do you think that a safe provision?

MR. WATTS—Yes; I think the Legislature could prescribe that the judge could discharge the jury in the event of the happening of a certain event—for instance, after it has been out 24

hours, or a jurymen takes sick, or a juror called from the jury room by necessity. The idea is to prevent setting up in a subsequent trial the fact that the jury was discharged in accordance with the forms prescribed by law.

MR. LOMAX—As stated by the gentleman from Montgomery, Mr. Watts, the sole purpose of this amendment to the bill of rights is to enable the Legislature to fix certain rules which shall govern judges in discharging juries, and to provide that when a judge acting under the rules prescribed by law does discharge a jury that the defendant nor the State can take any advantage of that discharge, but that the case go on and be tried *de novo*. Now the matter as suggested by my friend from Montgomery (Mr. Jones) was purely a matter of Legislative detail, but so far as I am concerned, in my practice of the law, I have never yet seen a jury come out and say, six of us want to be discharged, or five of us want to be discharged, but invariably come out after considering the case and say to the court that they ask to be discharged because it is impossible to agree on a verdict. Now, under the operation of the law in some counties of the State, notably in this county, in Mobile and Jefferson county, a juror can be kept in that court three solid months considering a verdict where it is impossible for them to agree. Now that power ought not to be in the hands of anybody, that is a power of condemning the jury to hard labor for the county just as much as if they went to the coal mines. That don't interfere with any right of the defendant, except his right to sit there and refuse to permit men who have given a fair, a just and an earnest consideration to his case, who are unable to agree, to be discharged, to prevent him from keeping those men there an interminable length of time, and we do not put in it in the discretion of the judge, but say the Legislature, the General Assembly shall fix the rule which shall govern the judges in the exercise of their power. Now if the judges overstep those rules, the defendant has his right to appeal as he had before.

MR. WEATHERLY—Could not the Legislature under that leave it to the judgment of the judge?

MR. LOMAX — I think not, because the section expressly says that he shall have the right to do it for reasons fixed by law, and consequently the Legislature would have to fix reasons for the judge to act upon.

MR. PETTUS—Do you object to this amendment: Insert after the word "case" in line three "after a jury has had a case of twenty-four hours, and a majority report that they cannot reach a verdict—

MR. LOMAX—Yes, I object to it, because it is purely a matter of legislative detail and has no business in the Constitution.

I think gentlemen, we ought not to insert in the Bill of Rights of the Constitution any matters of Legislative enactment, and I submit that all of these propositions made in reference to this section are simple matters of detail under the provisions of the Constitutional enactment which we propose. It can work no harm to anybody, it simply makes the defendant go through another trial and that is all without taking away a single right, it enables juries to be discharged that ought to be discharged, and the section ought to be adopted in my judgment. I move Mr. President, that the motion to reconsider be laid upon the table.

A division was called for on the proposition to lay on the table.

MR. REESE—On that I call for the ayes and noes.

The call for the ayes and noes was not sustained.

MR. REESE—I make the point of order that a motion to reconsider cannot be laid upon the table.

THE PRESIDENT—Does the gentleman refer to a rule?

MR. REESE—Yes, to Rule No. 27.

THE PRESIDENT—The point of order is overruled.

A vote being taken the motion to reconsider was laid upon the table by 52 ayes to 37 nays on division.

THE PRESIDENT — When the Convention adjourned on Saturday, it had under consideration the minority report on Section 12, and the gentleman from Dallas sent up an amendment which was not read as the time for adjournment had arrived.

MR. BURNS — I ask unanimous consent to withdraw the amendment.

THE PRESIDENT—The Chair hears no objection.

The question is on the adoption of the minority report on Section 12, that in civil actions three-fourths of the jury may render a verdict.

MR. LONG (Walker)—I am not a corporation lawyer, but I want to talk to this Convention a moment on a plain business proposition. I can see no good reason why three-fourths of the jury should be entitled or allowed to bring in a verdict. We all know very well and we had as well be frank among ourselves that this is but a step of some men who are hostile to corporations, in order to get large verdicts and unjust verdicts against corporations in the State of Alabama. That is true, because I can cite instances, and I have in mind now an instance that happened in a sister county of mine where a preacher riding on a half fare

ticket got jolted a little and brought a suit against a railroad company and eleven men wanted to give him a verdict for \$7,500, but one man alone held that jury and afterwards that preacher gladly compromised the case for \$150, and he was not entitled to one hundred and fifty cents. Now I will tell you what the farmers of this country will think about this. In my humble judgment they will say: Do you know what they have done there at Montgomery? Another one will say no, I have not heard what they have done. Well they have fixed it so the fellows in town can get a verdict agin us with just nine men. We are poor folks and cannot get but three of our friends on the jury, and those fellows round town know them and can pick the jury agin us. The farmers and people of this State are not clamoring for this. Nobody wants it except men who are hostile and who are out after corporations in this State. This question was not discussed before the people of Alabama. Nobody claimed that we were going to fix a three-quarter clause so far as juries were concerned.

MR. WILLIAMS (Marengo)—Was it not discussed to this extent, that we were not to tamper with the jury system?

MR. LONG—I cannot answer that. I don't know, but I do know there was no three-quarter clause advocated in this State so far as I know. It was not in the Democratic platform. Here we are asked to give up a system that has existed for centuries. If there is merit in this question there should be power given to the Legislature to do this, so if it proves a bad thing it can be undone. But there is no sensible reason why it should be put in the Constitution of Alabama. The people will rise up and rebuke it, you will invite the hostility of the corporations in Alabama. The farmers themselves will rebuke it, and believers in fair play will rebuke it. I am opposed to the three-quarter clause in the insurance laws of this State, and to the three-quarter clause in the jury laws. Why, when the lawyer comes to select the jurors in a murder case, or in an important case, they select some sap headed fellow who has got nothing himself and wants nobody else to have anything, and puts him on the jury. Nine times out of ten you cannot get over three smart men on the jury on an average in this State. You know that is a fact. I have heard arguments made in the jury room myself that so and so has plenty of money, this corporation is rich, this poor fellow is poor, let us take it away from them. Everybody knows that that has happened in the jury box. I think this minority report will do a great deal of harm in Alabama. I want the Convention to look at this thing fair in the face, and I ask is it right to put a three-quarter clause in our Constitution which will invite the antagonism of everybody in the State, that wants fair play, corporations and everybody else? The people don't want it, and I hope and believe this Convention will not have it done.

MR. THOMPSON—The proposition of the minority admits that it is a danger. Gentlemen of the Convention, if it is good in civil cases why is it not good in criminal cases? By every rule it ought to come in criminal cases because as you all know the burden of proof in a criminal case beyond all reasonable doubt makes it harder to get a unanimous verdict than it does in civil cases, where the plaintiff only has to make out his case to the reasonable satisfaction of the jury. I say if it is good in a civil case, it ought to apply in a criminal case. I don't believe there are three men in the Convention who for a moment would think of taking a man's life or his liberty except upon a unanimous verdict. Then I submit that a man's property or his homestead ought to be just as sacred as his liberty. It is not right to take his land in an ejectment suit, for those cases often turn upon questions of fact and are submitted to the jury. That his subsistence ought not to be taken; that his hard-earned dollars should not be taken upon the whim of nine men. As has been mentioned by the gentleman from Walker, it is rarely the case in an average county in Alabama that you have over two men out of twelve who are of such intelligence as they can weigh the evidence and apply the charge of the court to it.

Then if you put it in the power of nine men belonging to the average hoodlum element, if they know they are not bound to sit there and listen to the statements and arguments of a man on that jury who they recognize is superior in intelligence to themselves, that they have not got to be governed by or listen to him at all, they will stand there bull-headed and bring in a verdict regardless of law, justice and right. Then, I submit that if three-quarters is a good rule, if we are going to depart from ancient landmarks and leave out a unanimity verdict, if they believe in majority rule, let us have majority rule. Let us have it in criminal cases, too. I submit no man would think of that for a moment. It is entirely too revolutionary, and I submit to the gentlemen of the Convention this is the most revolutionary subject yet introduced in this Convention. It is fraught with more danger and will stir up more opposition to the ratification of this Constitution than anything yet, unless, perhaps, it was the talk taken on the subject of sheriffs. This certainly equals that, and, as has been said, no man ever discussed this on the stump, except to promise that the jury system should not be interfered with. Gentlemen of the Convention, remember that two years ago in the manifesto issued as one of the causes assigned why the act calling a Constitutional Convention should be repealed, it was said that there was no pledge then given that the jury system should not be interfered with. Then, if it was not discussed, and there is no claim that anybody asked for it except as has already been said by gentlemen interested in holding up corporations for big verdicts, why should it be adopted. I will make the admission that I have never tried a case for a corporation submitted to a jury. I have never tried a

case before a jury in which I represented a corporation. I am not interested in the matter in any sense.

MR. BOONE—Would you say that I and Governor Oates and Mr. Murphree and Governor Jones of Montgomery are engaged in holding-up corporations?

MR. THOMPSON—I do not mean that every man of the 43 who voted for this proposition is engaged in such a business. I do not individualize.

I submit, Mr. President, we ought not to depart from a system that has been a part of our law so long, a part of our American system that has existed for so long ought not be broken down except for good reasons, and if we are going to break it down in one instance, break it down in all.

MR. MARTIN—I can not get my consent to vote in favor of this amendment that proposes to alter a rule of law of such long standing in this country. Why it has been so long that the memory of man runneth not to the contrary. It has been endorsed by the learned jurists and the most experienced and capable practitioners; and, above all, it has been sustained and upheld and endorsed by the people of the country. Constitutional Conventions in this State have assembled for the purpose of amending the Constitution. They have assembled for the purpose of revising the Constitution. They have assembled for the purpose of making Constitutions; yet this grand and this true law has remained unshaken and unmolested. Now, gentlemen, why is it that this law has remained for so many hundred years? Why is it that it has been endorsed by the wisdom of men all along the line? Why is it that there has been no demand among the rank and file of the people for its alteration or its change? Other things have changed. Other laws have been departed from; but this one has been held up so long that the memory of man runneth not to the contrary, at least in this country. There is but one way to answer it; and that is, that it has been found useful. It has been found efficient. It has been found serviceable to the people in the administration of justice. Gentlemen of the Convention, I am opposed to cutting loose from these ancient moorings and departing from the land-marks of our fathers without a good and cogent and an overshadowing reason can be given for it. You may alter it, you may tear down the ancient landmark, but at once you will place upon yourself the necessity of giving your reasons for it, and, take my word for it, you will find more men differing with you than men on your side.

Now it has been said upon this floor that these gentlemen are standing by these ancient laws and these ancient practices simply because they were indulged in by our fathers. In many cases that is true. But, gentlemen, I contend here today that it



would be better for the people of this country, and it would be better for the State of Alabama, if many cases, if we would walk in the foot-prints of our fathers. God speed the day, and I think I catch the first days of its dawning, when the people of Alabama can return to the ancient practices and customs of these good men who have gone before us, at least in some respects.

Now, what is it you propose to do? You propose to allow nine men, instead of twelve, to render a verdict. Will this encourage litigation? Will it stimulate litigation? Gentlemen, I insist that it will stimulate litigation. I insist that its tendency will not be to quiet litigation. Why? Here is a man has a case in court. Twelve men render a verdict against him. There is not a man, woman or child in all this land who knows anything about courts, but what knows that it requires the concurrence of twelve minds to render a verdict in a civil or criminal case. I say, when a man has a case in court and twelve men render a verdict against him, he begins to think, and he says, "There are twelve men—twelve intelligent citizens, and they say there is no merit in my cause—there is no strength in my position; and, therefore, I must be mistaken in my contention." But let that man believe that there are three intelligent men standing up to him, three men who saw the facts as he saw them, and just nine men against him, he will say, "There were three men for me, and I will renew my fight and I will strengthen up my line and I will present the case, and these three perhaps will be multiplied.

MR. BOONE—Can he do that without reversing the case?

THE PRESIDENT—The gentleman will please address the chair when he desires to interrupt a speaker.

MR. BOONE—Very well, sir, I will do so.

MR. MARTIN—I say it will simply be when twelve men rise up and say there is no virtue in your case, will put a *quietus* upon it; but when only nine men rise up and say there is no virtue in your case because three men stand up and contend for it, it is not calculated to quiet litigation. Ah, but they say you can bribe one juror. Probably one juror may be bribed and it is possible to bribe three jurors and it is possible, perhaps, to bribe the Judge. All these things may occur; but I say that is no reason for altering this rule of long standing, which is well founded in the jury system of this country.

I would say to the gentlemen of this Convention, in the language of some eloquent man upon this floor, we had better pursue the course of our fathers and travel and use the oar with which they steered.

MR. WHITE — It seems to me that on a matter which should be decided from the standpoint of reason, the motives of

men on the other side should not be assailed; but it has been said here that it is being urged by men who want to "hold up" corporations. Forty-three of them voted here who, I am as sure were as patriotic as the gentleman who voted on the other side. I might just as well and with just as much force say, if I were inclined to do it, though I am not, that the only opposition comes from the corporations, who are afraid of the jury. I say it would be as equally fair for me to say that as for the gentlemen to say what they have said. Now remember this is not an extreme thing. Nine men out of twelve must concur in a verdict. Surely three-quarters of any body united upon one thing carries with it conservatism. It can not be said that is extreme when three-fourths of a body agree to it and must agree to it before a result can be reached; but they tell us it is ancient. I admit that it has around its neck and over its form a cob-web of centuries. It had its birth in the land of our fathers at a time when true men and fair women were carried to the stake and burned for witchcraft. It is just as old as that. Yes, it is ancient. It dates back to a time when tender women and light-bearded men were carried to the scaffold and died because they imagined the death of the king. Imagined the death of the king. Yes, it is ancient. It dates back to a time when men and women were burned at the stake because they would not admit and confess that the bread and wine was the body and blood of the Savior. Yes, it has all of that; but does that make it right? It dates back to that time when it was declared that the King could not do any wrong, yet, our ancestors more than 100 years ago said that kings could do wrong; and could do such grave wrongs that it justified a colony in rebellion. Now they say it is ancient. I concede it; but these other things I have mentioned are ancient along with it. Is that your argument? Do you meet the proposition on nothing but that? My friend says it has not been considered by the people. Neither was the proposition which you adopted on Friday and refused to reconsider this morning ever discussed before the people, i. e., that a Judge could discharge a jury, or a legislature could authorize him to do it, upon whatever cause the legislature might say they founded it. We have there broken down a provision that stands in every Constitution almost in the American Union and has stood in every Constitution Alabama has ever had. My friend suggests why it took so long after the decision in the Dartmouth College case to reach the proposition that the legislature had the right to amend or repeal a private charter. All these things are hedged about with these ancient things. But I want to put the question to you upon its merits: Why have twelve men all the virtue and it don't abide in one? If there is virtue in the twelve, it must be conceded in the greatest number of things that there is eleven times as much virtue in the eleven as there is in one. Then what right has one man possessed with no more intelligence and with no more knowledge and no better information, what right has he

to stand up and thwart the will of the eleven. Now we are advancing. We are in the noon-day of the Twentieth Century. As civilization and light falls upon the earth, men advance. So we only know it is a thing of the past simply because it had its origin in the dark ages. We know, those of us who have practiced law, we know that in many cases one man defeats the will of the eleven, either because he is corrupt, or because he sometimes has been prejudiced by some tale of woe poured into his ear. It is easier to reach one man than three or four. It purifies the channel of justice and the stream that flows from that channel. It makes it practically impossible for a man with money or prejudice to tamper with the jury. He can't tamper with four men. He takes too many chances. Do you think it is as wild a theory as some of our friends would make you believe, when such men as Justice Brewer of the Supreme Court of the United States declared in its favor, and when one of your Supreme Court Justices says it is right? Now let us look at it as thoughtful, reasonable and dispassionate men, without regard to who advocates it or who does not. If it is right, let us keep it there. If it is wrong let us take it away.

The President called the attention of the gentleman speaking, Mr. White, that his time had expired. On motion, by unanimous consent his time was extended.

MR. WHITE—I am very much obliged to my friend (Mr. Cunningham) but I have about concluded my remarks.

MR. WEATHERLY—In the short time allotted by the Convention, I will do something that I do not often do, request the members not to interrupt me, I mean by asking questions:

Mr. President, when it was charged by the ex-Governor of the State, then the Governor, and I use the word distinguished in good faith and mean what I say, that there was danger of the Constitutional Convention tampering with the Bill of Rights and disturbing the right of trial by jury, as an argument against the calling of a Constitutional Convention, I treated the suggestion with ridicule. But here we are deliberating soberly upon a question of whether or not the right of trial by jury shall be so impaired that one of its most essential constituents shall be taken away. I have a great deal more regard for the judgment and foresight of the distinguished Governor now than I had then.

MR. WHITE—May I interrupt the gentleman?

MR. WEATHERLY—I decline to be interrupted.

The argument for a change in this right of trial by jury is utterly fallacious. The minority ask, why should a unanimous verdict on a question of fact be required and enforced from a jury. "A majority of one vote in this Convention either puts a propo-

sition in the organic law or rejects it." I deny it. It may put it tentatively in this Constitution, but it must go to the people to be affirmed or rejected. "A majority of one vote in each house of the General Assembly creates, repeals or modifies a positive law, regardless of the magnitude of the interests involved." I deny it. It must be passed on by the other house and passed on again by the Chief Executive of the State. "A majority of the Senate of the United States ratifies or refuses to consent to a treaty with a foreign power." In one sense that is true. But how do they act upon it? They act upon it as a check upon what has been done by the Executive; and it takes, two-thirds, as has been suggested. "A majority of a single vote in a half million in a pivotal State, may elect a President of the United States, change the policy of the Government and bring prosperity or ruin to seventy millions of people." On its face that looks like it is true, but it is not. Under our peculiar form of elections whereby elections are had by States, a minority of the people of the United States may elect a President, and have done it. The system was devised for the express purpose of putting a check upon majorities, and, Mr. President, there is not a single institution in our republican government that is so constructed that it is left without a check, without some other power to check its operation. Our system of checks and balance in the operation of our Republican form of government is one of the chief sources of the admiration which other nations accord to us.

"So in the Supreme Court of the United States, five of the Justices against four held the income tax unconstitutional." They held it upon an appeal from another court. And I am not sure but what the very gentlemen who raised this question will agree that it is always safe to leave the decision of those questions to a bare majority, even of the Supreme Court. I have heard more dissent and dissatisfaction expressed on the score of those decisions. Besides there is a natural check to the action of the court. It is composed of trained lawyers who have months in which to deliberate upon a question, but in the case of jury trials, they are required to be speedy and all the facts are taken before the jury. They act on the spur of the moment. They act sometimes under excitement. They act under the stress of popular prejudice; and to authorize them to bring in a verdict by a bare majority, is to give speed to hasty and ill-considered verdicts in disposition to truth, and right, and justice. What are the real reasons on the other hand for requiring a unanimous verdict? I quote from Proffatt on jury trials, using it in preference to any language of my own devising:

"Each member of the jury is sworn to declare the truth according to his conscience. A single member, if conscientiously impressed with a view of a statement of facts, different from the

others, is as much entitled to have that view considered as the view of the majority; that when unanimity is required, the facts in the case are more thoroughly and fully investigated, with the view of bringing this unanimity about—for if a mere majority are agreed at the first consultation there would be no necessity to deliberate and reason together with the view of making a unanimous verdict is required, each member, however insignificant, has a right to explain his views and to compel the majority to listen to him; for it has been well said, truth is established by investigation and delay, but falsehood prospers by precipitancy. That the verdict of twelve men if rationally obtained, is more likely to be correct than that of nine out of twelve. It is calculated on the doctrine of probabilities that the probability of error in a verdict where a majority of nine out of twelve is sufficient for a decision, is about one to twenty-two, while unanimity is exacted it is one to eight thousand, and that a decision of twelve men, when unanimous, will command more respect and weight than nine out of twelve, or than the decision of a mere majority.”

The time of the gentleman here expired, and on motion of Mr. Samford, was extended ten minutes.

Now, in addition to that, I want to present this fact to this view of this Convention. My own idea about the real essential value of a jury trial which requires unanimity is this, it protects those who are unpopular in the community and who would otherwise be oppressed under the laws of God; but there is always one man at least can be found who will stand up for the right, though the heavens fall. Talk about corporations. Yes, of course, corporations are weak in public opinion and it is a protection to them; but there are others for the Convention to consider. Any man of wealth in the community may be unpopular, not so much on account of his wealth, but the way he got it. That is no reason why he should not have a fair jury trial. Corporations have the right to exercise the right of eminent domain. They can come to the gentleman of Washington or they can come to you and take your land from you but they would have to pay you for it; but maybe you don't want to give up your land. You go to a jury to try that question; and under this ancient law, which is being ridiculed here today, your rights are protected, because it takes twelve men to say whether or not you shall give it up and how much shall be paid for it. Whereas, under the amendment here proposed, this corporation could go in there and submit its case and on the first consultation nine men out of the 12 would be against you; and they would not reason and they would not deliberate but they want the railroad to come in or the rolling mill to be established or the cotton mill in their midst, they want the public improvement and the whole town is against you and your only protection is the one or two men on that jury.

The time has been, Mr. President and gentlemen of this Convention, when the minority representation on the jury in the Federal Court was worth its weight in gold—in gems of the most priceless value, in the South. Recall the days of reconstruction and you can recall them. When you were before the Federal courts the only barrier that stood between you and utter humiliation was the minority on the jury. If there is anything in the world that inspires—I was almost about to say disgust, but I won't say that; but it inspires indignation for men to come here and attempt to overthrow an ancient institution having elements in it which were put in it for the express purpose of protecting the weak against the strong. What can we foretell as to what conditions will confront us in this country, especially if we undertake the suffrage law or even if we do not? How can any man predict the conditions that will arise which will require the protection of this jury institution, as we have it now?

MR. BURNS—Will the gentleman permit an interruption?

MR. WEATHERLY—I must decline to be interrupted, Mr. President. Now they ridicule it because it is ancient. The gentleman has said that it was contemporaneous with the doctrine that the King could do no wrong, yet the English people cut off Charles First's head and destroyed that doctrine and left the jury system intact. Why the English people and the system, gentlemen, are ten centuries old. Think of it, one thousand years old; and the English people have progressed and lived upon it. The highest social body in the world today, the English people, and they have gone through their court procedures and reformed them root and branch. The English system of law is nothing today like it was one hundred years ago. They have changed and reformed it entirely, but no Englishman has dared to lay his hand on this great institution.

You might as well say a jury should be reduced to eight. Why have twelve instead of eight. That would require less deliberation. They would do it quicker but the reason is it was put there for a purpose, it is a goodly number of men and it adds deliberation in the formation of a verdict.

MR. BROOKS—The proposition that two-thirds of a jury may render a verdict is, as has been well stated by the gentleman who has taken his seat, a radical departure from our system of trials; but it is not a new proposition by any means. It has been discussed for many years, and has received the favorable consideration of some of the strongest men in this country. It is an innovation and it is true that innovations are not always improvements, but a blind adherence to a system consecrated by time merely will make it impossible ever to have innovations that are improvements.

Now, the gentlemen who oppose this proposition talk about its overturning the theory and policy of centuries, that it is a removal of the ancient landmarks. But, sir, well settled principles as well settled precedents and customs must sometimes be modified by changed conditions and they must yield to the demand of an enlightened public sentiment. The conversation to reject merely because they overturn precedent and custom handicaps progress, and if we will apply to well settled precedents and customs and test existing conditions we may promote development and we may as individuals and as a people, if we profit by experience, make stepping stones of our dead selves to better things. When this matter was up for discussion, I listened in vain for argument from those who are opposed to it, and not one word was said in debate. This distinguished convention, which has always been so generous in its views in respect to any matter before it, so far as the opposition to this proposition is concerned, was as dumb as an oyster.

MR. LOMAX—Will the gentleman permit a question?

MR. BROOKS—Yes, sir.

MR. LOMAX—Is it not a fact that after the gentleman from Macon and the gentleman from Washington and the gentleman from Jefferson had each spoken in favor of the minority report that the motion was made to lay on the table so that all the debate from the majority was cut off?

MR. BROOKS—Yes, and the motion was made by the gentleman himself, the chairman of the committee.

MR. LOMAX—No, sir. I think it was made by Mr. Barefield of Monroe.

MR. BROOKS—The chairman of the committee first made the motion to table and then withdrew it, but up to the time the chairman had made that motion no argument from that side had been made.

MR. LOMAX—I stated on Saturday and I desire to state again, that I sat in my seat for half a minute waiting for some gentleman from the minority of the Committee to make some motion, or to discuss the question, and they failing to do it, I made the motion to table and as soon as they indicated a purpose or a desire to discuss the matter, I withdrew the motion to table and it was then renewed before the majority of the committee had an opportunity to discuss the proposition.

MR. BROOKS—I think the chairman of the committee understands the point I make. There is no inconsistency between what he says and what I say. My contention is that up to the time the motion was made to table this resolution, no gentleman

on behalf of the committee had opposed this minority report by any argument to the Convention, and the stenographic report will bear me out in that statement. Now I state as a fact and I am glad at this late moment after we have only had an expression from the opponents of the measure by 43 votes recorded Saturday, that they have at last come forward and put up some champions to defend the cause.

Now, Mr. President, my own reflections lead me to believe that this language embodying the principle of unanimity of the jury in civil cases ought to be modified not only in the interest of the parties litigant but of the counties, cities and generally for the public interest. I do not propose to go into any elaborate argument why this change should be made because much has been said pro and con, but I do say there are several reasons which it seems to me ought to address themselves to the general good sense of the people of this State in behalf of the change proposed by the minority.

It has been said that one trouble is that a single juror may be fixed, and the result is a mistrial. If that is true, it is no worse for corporations than it is for individuals. If it is true, the honest litigant is at the mercy of the dishonest litigant, the poor but honest suitor is at a disadvantage with a well-to-do opponent who is unscrupulous enough to use his means unworthily.

But leaving out the question of corporations, there are other reasons. There is scarcely a jury in the land upon which there is not one or two or perhaps more men who are governed by their prejudices, and who are incompetent, for that reason, to brink in any just and proper verdict. Those men are generally governed by their admiration for one of the counsel in the case, and they will vote for a verdict, or against it, just as desired by the counsel for whom they have that admiration so deeply imbedded in them.

I remember on one occasion ex-Senator Pugh told an anecdote about an old gentleman of Alabama during the reconstruction days. He was so strong in his prejudices that he refused to be reconstructed ever so little and his friends argued with him and they said to him "You ought to lay aside your prejudices," but said the old gentleman, "my prejudices are my principles." So it is with many men on the jury. Their prejudices are their principles.

MR. JACKSON—If it is wrong to allow three-quarters of the jury to deprive a man of his liberty, why is it not likewise wrong to allow three-quarters to deprive him of his property?

MR. BROOKS—That is a very pertinent question at the right time and occasion, but we are not discussing that now.

THE PRESIDENT—The gentleman's time has expired.



MR. WHITE—I move that the time of the gentleman be extended.

MR. BROOKS—I am very much obliged to the gentleman and to the Convention but I prefer to abide the rule.

MR. CUNNINGHAM—Mr. President, I believe with the exception of Mr. Brooks, nearly all the delegates on this floor who have discussed this question are lawyers. I thought it was about time that you heard from the people, and with the indulgence of this Convention I will make a few remarks. I want to say, Mr. President, I myself believe that the world do move; and I am free to confess that ancient customs and traditions should not exercise an absolute and uncontrollable influence upon enlightened parliamentary bodies at the beginning of the 20th century. We should look upon this question very largely in my judgment in the light of the present day, and the first question or proposition to which I desire to call your attention is the disposition to impugn, to suspect or to criticise the motives, not only of attorneys and delegates who may appear in a parliamentary body, but also of witnesses who appear upon the stand.

Now I believe that a change of this jury system from a verdict that is unanimous to one that is three-fourths, will not be to the best interests of the people of the State of Alabama. I believe primarily it will work hardship upon the corporations of the State of Alabama. I have not a doubt of that proposition. Rightfully or wrongfully there is a bias and a prejudice against property invested in corporations in the State of Alabama. I do not believe that anybody will question that proposition. And if that be true, it therefore follows that in the selection of a jury to try cases in which corporations appear as defendants in damage suits, the plaintiff has primarily the advantage. If fifty per cent. are more or less biased and prejudiced in advance, it therefore follows that this bias or prejudice, though it may be unconscious, will have a tendency to make up a verdict prior to the hearing of testimony, and the hearing of argument. Not only is this true in my judgment, but those here who have had the misfortune to testify upon the witness stand as experts and as to matter of fact, are familiar with the fact that if your testimony is to the benefit and interest of the plaintiff, the lawyer for the plaintiff is very easy in the cross examination. If it appears to be in the interest of the defendant then the lawyer with the defendant is very easy, but if your testimony is against one side or the other then the purpose is to degrade the character of that witness, though he may stand in every relation in life, socially, in business and politically, and in every way unchallenged for honesty and integrity, yet they will undertake to besmirch his honor and character by asking questions which to my mind are clearly out of order.

Mr. President, sympathy has no place in a court in my judgment, and yet it plays an important part. Now, I undertake to say that if this amendment is adopted—I am not afraid to say it—it will redound to the interest of plaintiffs in damage suits in Jefferson county. I say it boldly, but I do not want here to interpret the motives of the gentlemen who usually appear for plaintiffs in these cases as having that as a primary motive. I am opposed to that proposition, but I undertake to say it will add thousands and hundreds of thousands of dollars to those who bring suits for damages and imaginary damages, and of that fifty or twenty-five per cent. will find lodgment and properly, no doubt, in the pockets of those who appear for them in courts of justice. Now who bears the burden? Is it the corporations? Does not the corporation take into consideration the amount of money they have to pay the insurance companies when they are considering these questions with the committees that appear for labor. Don't they take into consideration the amount of money they will probably have to pay, considering the doctrine of chances in adjusting the wages with their labor. Why, Mr. President, about that there cannot be a question, and while it will apparently cost the corporations of Jefferson County thousands of dollars, in reality it comes out of the pocket of the man that earns the money. It comes out of the labor because it will be a charge and a charge that is properly made against the cost of operating these great industries. Now, Mr. President, I believe on the floor of this Convention gentlemen should be permitted to say what they have to say, and exercise the privilege of voting without questioning their motives. I do not believe it is the proper place, and, therefore, I do not approve of all that has been said on the question I am advocating. I am opposed to this three-fourths proposition, and I sincerely hope, in the interest of justice, and fair play, right and propriety, that we do not disturb this great independent and fundamental question of the right of trial by jury.

MR. COLEMAN (Greene)—Mr. President and delegates of the Convention, I have listened to the argument Saturday and today, pro and con, with a great deal of interest, and at the risk of being considered as consuming too much of your time by appearing too much on this floor, I conceive it to be a duty to make some suggestions to you as have occurred to me in regard to the question now under consideration. It cannot be denied that there has been great merit and force in the argument of the gentlemen who contend for the unanimous verdict, nor can it be denied that there has been much merit in the contention of those advocating verdicts by three-quarters of the jury. If, therefore, there is a plan of solution which will facilitate trials as insisted upon by those who favor the minority report, and at the same time protect those who, chiefly, the argument has contended, would be injured by the adoption of the three-quarter verdict, it does seem to me it

would be wise for this Convention to consider that question. No man who has appeared in the courts of this country but knows full well that in every trial by an individual against a corporation, whether city, county or railroad corporation, or express company, or any character of corporation, however honest and sincere the juries may be in their desire to do justice, their sympathies are with the plaintiff, the one single suitor against the corporation. But because that exists, does not appear to me any sufficient reason why three-fourths should not be sufficient in cases purely ex contractu. If there is a case between an individual and an individual, or an individual and a corporation, founded upon contract purely, juries will be just between those parties and it seems to me from the argument we have had, that the sole trouble grows out of cases sounding in tort in which cases the attorney having the closing argument can, by a skillful speech, secure the sympathies of the jury to such an extent that no court can overcome it. Any man who has watched trials in the courts in this country knows that it is true. Having had this matter under consideration, and having considered the matter since Saturday afternoon, it has occurred to me wise and proper to offer the amendment which I now send up and ask the clerk to read.

The amendment was read as follows: Amend the minority report of the committee by striking out said minority report, and adding to the section as reported by the committee the following: "Provided, that the General Assembly may authorize the returning of verdicts upon the agreement of three-fourths of the jury in all civil cases, not including actions in tort."

MR. COLEMAN—I use the phrase "in tort" because it has a comprehensive legal definition. All courts and lawyers know their meaning. This has been suggested by those who are in opposition to the minority report, and the amendment of itself will facilitate trials in all actions founded upon contract, express or implied, and this Convention by that amendment does not take upon itself to decide arbitrarily that a verdict may be returned by three-quarters. The matter is left to the General Assembly. As it is said this matter was not discussed when we were elected to these positions, but it can be discussed, and the members to the General Assembly will be in a position to know the desires of the people upon the subject.

MR. WEATHERLY—Is it not a fact that the only difference between the amendment offered by you and the report of the committee is that the whole matter is relegated to the Legislature?

MR. COLEMAN—There is one other difference. The matter is not left to the Legislature so far as actions in tort are concerned. They remain exactly as reported by the committee. I will say to the delegates to the Convention that upon reading this report it met with my approval, but after hearing argument pro

and con, and seeing where hardship would result, and where protection could be afforded, I came to the deliberate conclusion that there should be protection given to those parties against whom we know from experience, however just and honest juries may be, their sympathies are altogether upon one side and not upon the other. I do not believe, as has been suggested, that corporations stalk abroad in the State and the jury trials and the body politic are festering sores from beginning to end. There are exceptional cases which should give rise to severe criticism, but upon the whole, I maintain the rights of property are as well preserved in this State as in any other State, and I believe a provision such as embraced in the amendment I have offered will quiet these people who are apprehensive of injustice being done to them, and you will raise up no opposition to the ratification of the Constitution because they are protected in the only particular where injury can be done to them. Upon contracts they are willing to go before the juries of the country because there the law determines the measure of damages that ought to be recovered, but in trials in tort cases there is a great latitude left to the jury, and there is no way to correct an abuse.

MR. SAMFORD—It seems to me that this discussion has been protracted long enough for every delegate upon this floor to come to a satisfactory conclusion. I, therefore, move the previous question upon the section and both amendments.

MR. WHITE—Will the gentleman allow me to discuss the amendment to the amendment?

MR. SAMFORD—No sir, I decline to withdraw the motion for the previous question.

A vote being taken, on a division the previous question was carried by a vote of 57 to 46.

MR. LOMAX—I do not care to unnecessarily consume the time of this Convention in the discussion of this proposition.

MR. ROGERS (Sumter)—I rise to a point of order. The question is on the adoption of the amendment offered by the delegate from Greene and is not on the original proposition. I think the gentleman will have his time to close the debate when the question is on the original proposition.

THE PRESIDENT PRO TEM (Mr. Graham) Talladega—In response to the point of order, the Chair will state that the main question is ordered on the proposition and all amendments. The question is in order.

MR. LOMAX—Mr. President, I do not believe any question has yet come before this Convention which more involves the essential liberties of the people of Alabama than the question now

before you, and, therefore, it has not seemed to me that an attempt ought to be made to cut off a full and a fair discussion of it, but I believe now every view of this question has been presented and I believe this Convention is ready to say what shall be done with the original proposition and both amendments. Hence, I shall not detain you long in the discussion of the question.

The very fact that the amendment offered by the minority and the amendment offered by the gentleman from Greene are in such direct antagonism, is to my mind evidence that these amendments ought not to be adopted and that the section should stand as reported by the Committee.

The complaint made on Saturday was that by reason of the fact that bribery stalks at noon time and sitteth in the court house in the evening hour, we should make a verdict of nine men control a jury, because the men who are injured by these great corporations could not get at them as long as they had the power to bribe one man on a jury. I do not believe with all due deference to my friends that the people of Alabama are as corrupt and venal as they are painted in that declaration. I do not believe that bribery runs rampant over the hills and valleys of Alabama. I believe that in the matter of morals, in the matter of honesty and in the matter of integrity, the people of Alabama today compare with its people in any period of its history and will compare with the people of any time in the future. If it be true that in some portions of Alabama there is bribery of jurors, gentlemen who represent that portion ought to go home and punish the bribe-givers and takers, and not seek to strike down the monuments of liberty of all the rest of the State to accomplish it.

Now, I have no sympathy with the idea that one side or the other of this proposition is interested because of peculiar interests they happen to represent in court. But I want to call the attention of the Convention to one particular proposition in connection with that idea about the verdict of juries being controlled by corporations by securing one man. Most of the actions for damages which are brought in this State for personal injury are brought against railroad corporations. Every single large railroad corporation in Alabama is chartered under the laws of a foreign State. Pass this amendment, provide for a jury of nine men, bring your suits in the State court against the corporations, and all these corporations would have to do is to move to transfer that case to the Federal Court and entrench themselves forever behind a verdict of twelve men and the result will be—

MR. BOONE—Is it not the law that on the law side of the Federal Court, under express statute, the proceedings conform to the proceedings of the State court?

MR. LOMAX—Yes; but that does not affect the guaranty of the Federal Constitution of a jury of twelve, and the result will be, if you adopt this provision, you will drive the corporations into the impregnable fortress of the Federal Court and make this rule only to affect the common people of Alabama. Are you prepared to do it?

MR. BLACKWELL—Does the gentleman tell the Convention that when the amount involved is less than \$2,000 that you can transfer that case?

MR. LOMAX—Certainly not; but who ever heard of a damage suit for less than \$2,000 where there was an injury as much as the loss of a finger. I would like to be pointed to one on the records of the courts of Alabama.

So I say by the adoption of this proposed amendment you absolutely entrench these corporations in the Federal Court and you don't accomplish the purpose you desire.

Now, they say this provision has cobwebs on it. I have heard that the best wine has cobwebs on its bottles.

It is said that this provision had its origin in the days when the doctrine prevailed that kings held by divine right. It did and upon the field of Runnymede from the throat of a king who claimed by divine right the people of England wrung this concession and it stands to this day untouched in English law. It was not only in Magna Charta but it was in the declaration of rights at the restitution of Charles II. It was put in the act of settlement when William and Mary came to the throne. It was imbedded in the American Constitution and there it ought to stand until time shall be no more.

But we are told that some of the great States have adopted this reform. What States do they cite us to? The States of Colorado, Florida, Idaho, Iowa, Louisiana, Missouri, Michigan, Montana, Nebraska, New Jersey, North Dakota, Washington and Wyoming.

MR. WEATHERLY—Will the gentleman allow me to ask if North Dakota is the State where you can get a divorce in twenty-four hours?

MR. LOMAX—Yes, and Wyoming is a woman suffrage State and Colorado is another and all of the States, with the exception of three, have not got the swadding clothes of statehood off yet.

MR. WHITE—How about California and Connecticut and Texas?

MR. LOMAX—I am reading from the States cited in the argument of my learned friend, Mr. Blackwell. If there are others,

I don't know it. I suppose he cited them all. But when you refer us to the great reform in the jurisprudence and judicial system of a State why don't you refer us to some of the great States that have been the leaders in public thought for a century? Why don't you refer us to New York which, only a few years ago had a Constitutional Convention? Why don't you carry us to Massachusetts, where the law has always been executed in all the perfection of detail for one hundred years. Why refer us to these little children that have grown up here like mushrooms in the last twenty years?

Now my learned friend from Jefferson read on yesterday from an elaborate report that was made by a Committee, I believe it was said of seventy, to the English Parliament, in which they advocated the reform of the jury system. This very reform that is proposed here now, the reduction of the number of the jury to make a verdict to nine men.

I tell you gentlemen of the Convention, I do not believe that even in these United States is the doctrine of constitutional liberty more deeply engrafted than it is upon the soil of England, and yet, notwithstanding that report of the Committee in favor of this reform, England stands today upon a verdict of twelve men, and in it she is followed by the most progressive, the most populous, the most prosperous, and the most enlightened States of the American Union, and the American Government itself. Ah, Mr. President, but these gentlemen that talk about reform, my friends, the reformers, have not got the true metal of reform about them; it does not ring like the toosin calling the people to awake. If it be true that this is a reform which is demanded, if it be true that it ought to be done, because in the Congress of the United States, in the Legislature of Alabama, in a great national election, a majority of one decides all questions, and I believe in looking over the list of citations which they have made, they cite but one single instance where a majority of more than one is required, and that is in the United States Senate, on the question of the ratification of a treaty between the United States and a foreign power, where it requires two-thirds—but if the majority rule is so good, if, by it, we can decide the question of who shall be the President of the United States, if by it we can decide what shall be the laws of the commonwealth and of our country, if by it we can decide what shall be the rule of our Supreme Courts, why don't they come up to the full measure of their duty; why have you not the courage of your convictions, and come out and say that a majority of one on a jury shall decide the rights of property in Alabama? That does not sound like reform. If it is good to have nine to decide the case, it is better to have seven. We know it because these gentlemen have said it, and we knew before they said it that in these other matters, a majority of one decided ques-

tions, even to the election of a president of the United States. If it be such a great reform, why, gentlemen, do you not apply it to criminal cases? Why do not you say that the jury shall have a right by a majority of one to determine that a man's life or his liberty shall be taken? Oh, they reply, that it is a different thing. Is it different? Do you know a man, gentlemen of the Convention, that will not defend his property with his life, and if the man himself is so careless of his life, that he will defend his property with it, why should you be so careful of it as to take his property away, by less than twelve, and yet retain the twelve to keep him out of the penitentiary or away from the gallows?

I submit to you, gentlemen of the Convention, if you adopt this proposition another thing will happen. You absolutely destroy the chances for deliberation, in a jury box. If a jury goes in the box, and they are divided in opinion, and they must be unanimous, those men will sit down and reason together, they will discuss the evidence, talk about the law as the Court gave it to them, and in a majority of cases, in the large majority of cases, they will find where the truth is, and declare it in their verdict; but once say that nine men shall decide a case and they walk into a jury room, and the first thing is "let us take a vote and see who has got a majority," and nine of the jurors say the plaintiff or the defendant should have the verdict, deliberation is gone, and you have what you seem to be hunting for, quick and speedy justice, without sale, denial or delay, but you have not got it as the result of the deliberate conviction of the jury, as you ought to have it, if our laws are to be properly executed in this country.

Now, gentlemen, the proposition of my learned friend from Greene is based upon another hypothesis. He says, and his view of it is that if a man brings an action of damages against a corporation, the sympathy of the jury goes out to the plaintiff, and it is so strong that it will overcome. (I don't mean that is his argument), but I take it it would be so strong that it would overcome the bribe-bought juror, my friend, the gentleman from Jefferson (Mr. Beddow) talks about, and so the gentleman from Greene puts it that in cases of tort, a majority verdict of nine shall not prevail.

I tell you, Mr. President, and gentlemen of the Convention, if you go amongst the people of Alabama, (and I tell you you have got to have a fight to get this Constitution adopted, you all know it and realize it), and let some man get up before them, that has the power of speech on the stump, and let him tell the people of this State that this Convention has passed a statute which absolutely guarantees to the corporations a verdict of twelve men, but if a man sues you, for your little forty acres of land here, nine men can take it away from you—You cannot defend it on the stump, and you put your Constitution in peril.



And if, on the other hand, you leave out this proposition and adopt the proposition contained in the minority report of the Committee, the same power lies in the hands of designing and unscrupulous men to go to the men who own their little farms all over Alabama, and say to them, this Constitution has done what it was predicted it would do, it has tampered with the jury system of Alabama. It has put it in the hands of this fellow that has got a mortgage on your property, to get it from you by a verdict of nine men, when the Constitution since the dawn of time has said twelve men, and that proposition would give you trouble world without end in securing the adoption of the Constitution.

I appeal to this Convention not to tamper with the bill of rights. I do not care if it is old. If the proposition I submit to you does not appeal to you by reason of its virtue and its merit, God knows I do not ask you to vote for it by reason of its age, but it is part and parcel of the rights reserved to the people, and I appeal to this Convention not to touch them, but to let them stand as they have stood since the dawn of Alabama's history, the bulwark of the people against oppression of all sorts.

THE PRESIDENT PRO TEM—The previous question has been ordered upon the amendments and the main proposition. The question now is upon the amendment ordered by the gentleman from Greene.

MR. WHITE—I call for the ayes and noes.

THE PRESIDENT PRO TEM—The ayes and noes are demanded; shall the call be sustained?

The requisite number of delegates rising, the call was sustained.

THE PRESIDENT PRO TEM—The question is upon the amendment offered by the gentleman from Greene. As many of you as favor this amendment will make it known by saying aye as your names are called, and those opposed will make it known by saying no as your names are called.

Mr. Banks asked for a reading of the amendment and it was again read.

MR. JONES (Montgomery)—On this question I am paired with the delegate from Mobile (Mr. Smith):

I do not know how he would vote on this proposition. If I were free to vote, I would vote no, because I want the minority report or nothing.

MR. HEFLIN (Chambers)—It is my understanding that a delegate cannot pair with another delegate unless he knows how

that delegate would vote, and there is an understanding that one will vote in the affirmative and the other in the negative—

THE PRESIDENT PRO TEM—To what purpose does the gentleman rise? To require that the gentleman from Montgomery should vote?

MR. HEFLIN—I rise to a point of order that the gentleman is not paired, and he should vote.

MR. JONES (Montgomery)—A delegate cannot vote after he pairs on a proposition, and I would like to say that I consider the point of order as entirely frivolous.

THE PRESIDENT PRO TEM—The Chair so holds, under the statement made. The roll call will proceed.

MR. OATES—I am paired with the delegate from Monroe (Mr. Morrisette), but I do not know how he would vote on the question; therefore I vote aye.

MR. PALMER—I am paired with Mr. Locklin. If he were here I reckon he would vote aye and I would vote no.

And upon the call of the old roll the vote resulted.

#### AYES

Ashcraft,	Dent,	Rogers (Lowndes),
Banks,	Macdonald	Rogers (Sumter),
Brooks,	Oates,	Wilson (Washington),
Coleman, of Greene,	Reynolds (Henry),	

TOTAL—11

#### NOES

Messrs. President,	Cunningham,	Haley,
Almon,	Davis, of DeKalb,	Harrison,
Barefield,	Davis, of Etowah,	Heflin, of Chambers,
Bartlett,	Duke,	Heflin, of Randolph,
Beavers,	Eley,	Henderson,
Beddow,	Eyster,	Hodges,
Bethune,	Ferguson,	Hood,
Blackwell,	Fitts,	Howell,
Boone,	Fletcher,	Howze,
Bulger,	Foshee,	Jackson,
Burnett,	Foster,	Jenkins,
Burns,	Freeman,	Jones, of Bibb,
Byars,	Gilmore,	Jones, of Hale,
Carmichael, of Colbert,	Glover,	Jones, of Wilcox,
Carnathon,	Graham, of Montgomery,	Kirk,
Chapman,	Graham, of Talladega,	Kirkland,
Cobb,	Grant,	Knight,
Craig,	Greer, of Calhoun,	Kyle,

Ledbetter,	Parker (Elmore),	Smith, Morgan M.,
Leigh,	Pearce,	Sorrell,
Lomax,	Pettus,	Spears,
Long (Butler),	Phillips,	Spragins,
Long (Walker),	Pillans,	Thompson,
Lowe (Lawrence),	Pitts,	Vaughan,
McMillan (Wilcox),	Porter,	Walker,
Martin,	Reese,	Watts,
Maxwell,	Reynolds (Chilton),	Weatherly,
Merrill,	Samford,	White,
Miller (Wilcox),	Sanders,	Whiteside,
Murphree,	Sanford,	Willet,
NeSmith,	Searcy,	Williams (Barbour),
Norman,	Selheimer,	Williams (Marengo),
Norwood,	Sentell,	Wilson (Clarke).
O'Neal (Lauderdale)	Sloan,	
Parker (Cullman),	Smith, Mac. A.,	

TOTAL—103

## ABSENT OR NOT VOTING

Altman,	Inge,	Palmer,
Browne,	Jones, of Montgomery,	Proctor,
Cardon,	King,	Renfro,
Carmichael, of Coffee,	Locklin,	Robinson,
Case,	Lowe (Jefferson),	Smith (Mobile),
Cofer,	McMillan (Baldwin),	Sollie,
Coleman, of Walker,	Malone,	Stewart,
Cornwall,	Miller (Marengo),	Studdard,
deGraffenreid,	Moody,	Tayloe,
Espy,	Morrisette,	Waddell,
Grayson,	Mulkey,	Weakley,
Greer, of Perry,	O'Neill (Jefferson),	Williams (Elmore),
Handley,	Opp,	Winn,
Hinson,	O'Rear,	

So the amendment was lost.

THE PRESIDENT PRO TEM—The question recurs upon the minority report.

MR. BLACKWELL—And on that I call for the ayes and noes.

THE PRESIDENT—The ayes and noes are demanded; shall the call be sustained?

The requisite number rising, the call was sustained.

During the call of the roll:

MR. BURNS—I desire to state that on Saturday I made a pair conditionally with Mr. Carmichael of Coffee. I have just

heard his name called and he is not present to vote, and consequently the pair ought to stand, and I would vote no and he would vote aye.

MR. JONES (Montgomery)—I am paired with the delegate from Mobile (Mr. Smith.) If he were here he would vote no and I would vote aye.

MR. JONES (Wilcox) — I am paired with Mr. Cofer of Cullman; if he were present he would vote aye and I would vote no.

MR. McMILLAN (Wilcox)—I am paired with Mr. Moody. If he were present he would vote aye and I would vote no.

MR. PALMER—I am paired with Mr. Locklin. If he were present he would vote no and I would vote aye.

Upon the call of the roll the vote resulted as follows:

#### AYES

Ashcraft,	Dent,	Reese,
Banks,	Fletcher,	Reynolds (Henry),
Bartlett,	Foshee,	Rogers, of Lowndes,
Beddow,	Freeman,	Sanford,
Blackwell,	MacDonald,	Selheimer,
Boone,	Murphree,	Smith, Mac A.,
Brooks,	Norwood,	Spears,
Byars,	Oates,	White,
Cobb,	Pettus,	Wilson, of Washington,
Craig,	Pitts,	

TOTAL—29

#### NOES

Messrs. President,	Ferguson,	Hood,
Almon,	Fitts,	Howell,
Barefield,	Foster,	Howze,
Beavers,	Gilmore,	Jackson,
Bethune,	Glover,	Jenkins,
Bulger,	Graham, of Montgomery	Jones, of Hale,
Burnett,	Graham, of Talladega,	Jones, of Bibb,
Carmichael, of Colbert,	Grant,	Kirk,
Carnathon,	Greer, of Calhoun,	Kirkland,
Chapman,	Haley,	Knight,
Coleman, of Greene,	Greer, of Calhoun,	Kyle,
Cunningham,	Haley,	Ledbetter,
Davis, of DeKalb,	Harrison,	Leigh,
Davis, of Etowah,	Heflin, of Chambers,	Lomax,
Duke,	Heflin, of Randolph,	Long, of Walker,
Eley,	Henderson,	Long, of Butler,
Eyster,	Hodges,	Lowe, of Lawrence,

Martin,	Pillans,	Thompson,
Maxwell,	Porter,	Vaughan,
Merrill,	Reynolds, of Chilton,	Walker,
Miller, of Wilcox,	Rogers, of Sumter,	Watts,
NeSmith,	Samford,	Weatherly,
Norman,	Sanders,	Whiteside,
O'Neal, of Lauderdale,	Searcy,	Willet,
Parker, of Cullman,	Sentell,	Williams, of Barbour.
Parker, of Elmore,	Sloan,	Williams, of Marengo.
Pearce,	Sorrell,	Wilson, of Clark.
Phillips,	Spragins.	

TOTAL—81

## ABSENT OR NOT VOTING

Altman,	Jones, of Montgomery,	Proctor,
Browne,	Jones, of Wilcox,	Renfro,
Burns,	King,	Robinson
Cardon,	Locklin,	Smith, of Mobile,
Carmichael, of Coffee,	Lowe, of Jefferson,	Smith, Morgan M.,
Case,	McMillan (Baldwin),	Sollie,
Cofer,	McMillan, of Wilcox,	Stewart,
Coleman, of Walker,	Malone,	Studdard,
Cornwall,	Miller, of Marengo,	Tayloe,
deGraffenreid,	Moody,	Waddell,
Espy,	Morrisette,	Weakley,
Grayson,	Mulkey,	Williams, of Elmore.
Greer, of Perry,	O'Neill (Jefferson),	Winn,
Handley,	Opp,	
Hinson,	O'Rear,	
Inge,	Palmer,	

And by a vote of 81 noes to 29 ayes the minority report was lost.

THE PRESIDENT PRO TEM—The question recurs upon the adoption of the original Section as reported by the Committee.

MR. BOONE (Mobile)—I offer an amendment.

THE PRESIDENT PRO TEM—It is too late, the previous question has been ordered.

And upon a vote being taken the Section as reported by the Committee was adopted.

The hour of 1 o'clock having arrived, the Convention stood adjourned until 3:30 p. m.

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AFTERNOON SESSION

The Convention met pursuant to adjournment, there being eighty-seven delegates present upon the call of the roll.

MR. HEFLIN (Chambers)—I rise to a question of personal privilege.

THE PRESIDENT—The gentleman will state the question of privilege.

MR. HEFLIN (Chambers)—On this morning, during roll call, upon the last roll call before adjournment, when the gentleman's name from Montgomery was reached, he stated to the Chair that he was paired with the gentleman from Mobile, and that he did not know how that gentleman would vote and proceeded to explain his vote, saying that he would vote for the minority report, as he wanted that or nothing. I rose to the point of order that the gentleman could not state a pair unless the other gentleman would vote in the opposite from himself. Then the President pro tem asked me for what purposes I rose, and I said to have the gentleman from Montgomery to cast his vote without reference to a pair. The Chair ruled, when the distinguished gentleman from Montgomery said that it occurred to him that the point of order was frivolous, and the Chair said that the Chair ruled, that my point of order was frivolous. I want to set myself right before this Convention, Mr. President, by reading rule 38 of this Convention: "Every delegate may be required to vote on any question before the Convention." Further, rule 40: "After a vote has been ordered upon any question no delegate shall be permitted to explain his vote, without the unanimous consent of the Convention."

The gentleman from Montgomery stated something with reference to a pair, without stating a pair with the gentleman from Mobile upon the pending question, and without obtaining the consent of the Convention he stated that he would vote against the amendment, because he wanted the minority report or nothing, thereby explaining his vote to this Convention, by permission of the chair, but without the consent of the Convention. I rose to the point of order, and I think the President of the Convention will sustain me, for all parliamentary law does, that a gentleman cannot pair with another gentleman, unless the other gentleman would vote directly opposite from the way the gentleman himself would vote. I merely want to suggest, Mr. President, under the ruling of the President pro tem, the Convention was not very wise in passing these two rules. I just wanted to call attention to the matter.

MR. JONES (Montgomery)—I rise to a question of personal privilege. The point made by the gentleman from Chambers arose in this way: I stated that I was paired with the gentleman from Mobile, upon this question, and that I did not know how he would vote, and if he was present I would vote so and so. My friend from Chambers misapprehended the phase of the case in which the matter came up. When the amendment offered by the gentleman

from Greene came up. I then stated to the Chair that I did not know how the gentleman from Mobile would vote on that, but that I was paired with him on the general question, but if he was present I thought he would vote so and so, and I would vote so and so. That is not an explanation of a vote.

MR. HEFLIN (Chambers)—I will ask the gentleman a question before he sits down. Did you not state while you were on your feet, that you would vote against the amendment, because you favored the minority report or nothing?

MR. JONES (Montgomery)—Which amendment do you speak of?

MR. HEFLIN (Chambers)—The amendment of the gentleman from Greene.

MR. JONES (Montgomery)—I think I did.

MR. HEFLIN (Chambers)—Was not that explaining your position without leave from the House?

MR. JONES (Montgomery)—I don't think it was.

MR. HEFLIN (Montgomery)—I think it was.

THE PRESIDENT—It seems to the Chair there is nothing for the Chair to rule upon.

MR. GRAHAM (Talladega)—Just one word, not to prolong the matter.

THE PRESIDENT—Does the gentleman rise to a question of personal privilege?

MR. GRAHAM (Talladega)—I do.

THE PRESIDENT—The gentleman will state the question of personal privilege—

MR. GRAHAM (Talladega)—I wanted to correct the statement of the gentleman from Chambers in one particular. The President pro tem did not hold that this point of order was frivolous, but the Chair mentioned in the announcement that it was not well taken.

MR. HEFLIN (Chambers)—I dislike very much to call the distinguished gentleman's attention to the fact that the gentleman from Montgomery said that it seemed to him to be frivolous and the gentleman from Talladega said, "and the Chair so rules."

THE PRESIDENT—The special order will be the consideration of the report of the Committee on Preamble and Declaration of Rights. The Secretary will read the next section of the report.

Section 13 was read as follows:

Thirteenth—That in all prosecutions for libel for or the publication of papers investigating the official conduct of officers, of men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts under the direction of the court.

MR. LOMAX—There is a verbal error in the printed copy which might mislead some gentlemen. In the first line, after the word “for” is placed before “or;” it ought to be “or for the publication of papers.”

The only change in this Section, Mr. President, is that the words “for libel” are inserted before the words “for the publication of papers investigating the official conduct of public officers,” and it permits the truth of the charge to be given in evidence in prosecution for libel. I move the adoption of the Section.

MR. CUNNINGHAM—But before taking that vote, I desire to ask the Chairman of the Committee if it is the rule of practice in most civil suits or suits for damages, slander, etc., that the jury has to determine the law or does that apply to this special character of suits?

MR. LOMAX—That has been in every bill of rights in reference to libel, that I know anything about. In reality it is a legal fiction, but it has been there so long, nobody ever disturbs it. The jury in reality, in a libel case, decides just like they do in any other case.

THE PRESIDENT—The question is on the motion to adopt the Section.

Upon a vote being taken the Section was adopted.

Section 14 was read as follows:

Fourteenth—That all courts shall be open; and that every person for an injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay.

MR. LOMAX—There is no change in that Section and I move the adoption of the Section.

Upon a vote being taken the Section was adopted.

Section 15 was read as follows:

Fifteenth—That the State of Alabama shall never be made a defendant in any court of law or equity.

MR. LOMAX—The same proposition applies to that Section, and I move the adoption of the Section.



Upon a vote being taken the Section was adopted.

Section 16 was read as follows:

Sixteenth—That excessive fines shall not be imposed, nor cruel nor unusual punishments inflicted.

MR. LOMAX—There is no change made in that Section.

MR. PILLANS—I offer an amendment.

The amendment was read as follows:

Amend Section 16 of the Declaration of Rights, Article I. of the Constitution, by adding thereto the words following, to wit: And that it shall not be lawful to use the lash upon or whip or flog any person held to labor under conviction for crime or misdemeanor in this State.

THE PRESIDENT—The question is on the adoption of the amendment proposed by the gentleman from Mobile.

MR. PILLANS—It is with great reluctance that I offer an amendment to an old Section of the Bill of Rights, and did I not take it that there was a serious need for protection to be afforded by this Constitution to an unfortunate and unhappy class of our fellow beings in this State, I would not have offered it. But I think that the history of the present administration of the convict camps in this State justifies the amendment. It is a fact, known to all observant men, that not only are those who are convicted of felonies, either grave felonies or the lesser felonies, hired out as slaves, treated as slaves, whipped sometimes like dogs, but that this is done with those who are guilty of the most ordinary misdemeanor. It seems to me that it would appeal to any man of good feeling and humanity to do something to prevent this evil from continuing in this State. Now, Mr. President, I will say, and I say it without the fear of successful contradiction—

MR. COLEMAN (Greene)—Let me ask you a question. Does not Section 16 apply to punishments inflicted after sentence upon conviction, and none other?

MR. PILLANS—I think it does.

MR. COLEMAN (Greene)—Don't you propose to reach assaults and batteries committed in the punishment inflicted by parties in control?

MR. PILLANS—That is precisely what I propose to reach and I am not particular about where it comes in.

MR. COLEMAN (Greene)—One more question. Are not these parties in control as much guilty of assault and battery under

the law now as if your provision were incorporated in the bill of rights?

MR. PILLANS—I am very much obliged to my distinguished friend for asking the question. I was of the opinion as a lawyer that they were guilty, up to the time that the legislature of Alabama was seduced into passing an act that validated it. Up to the time that the legislature of Alabama passed an act for the protection of these unfortunates and provided for this whipping to be done only under the supervision of inspectors, it was without doubt an assault and battery, punishable by civil damages and criminal prosecution, and I am surprised that the able bar of Birmingham, and of Jefferson County, had not found it worth their while to bring damage suits for these slaves for the flogging which took place in their mines and works such a number of times. But they did not do it. It became a common practice in those mines and in those establishments, as far as I can learn. It became the common habit for those who were handling these gally slaves to inflict this punishment and the legislature of Alabama deeming it necessary to protect these people, passed laws, which, while intended for their protection, really only gave validity, I fear, to this evil, which ought never to have been done.

Now, not getting away from the line I was arguing, I will come back to it. The putting of this clause at the end of Section 16 as an amendment may be criticised by some of my friends. When it was first offered by me, I offered it as an independent ordinance. Members of the Committee were of opinion that if it came in at all, that it should come in as a part of this section. If it is not made a part of this section it may well come in as an independent section, but there is no impropriety in adding it to Section 16 as it is for the protection of the citizens of the State, which is really the object of the section.

I am aware from personal observation of how a white man has been crushed to earth and made a mere animal of, by being flogged, flogged like a dog, and there is not one man of you here who would have endured the agony of having one who was kind to you, or connected with you, flogged in such a manner who was guilty of nothing but a common misdemeanor. A man convicted of the crime of selling a lottery ticket. We all object to lottery, but the selling of lottery tickets is not a crime in itself. It is a crime because it is made so by law. That man was a man of excellent family. A man of excellent rearing, but a man of no force and he was put in a convict camp and flogged and that man ceased to be a man except in semblance.

Now it is that sort of thing which seems to be a charity to prevent, and which I seek to have prevented by this section of the Constitution. You may say it is very well to flog negroes if you

choose, but does it do gentlemen to flog white men. Apply it to yourself, and take it to yourself, and is there one of you who would do anything but take the life of the man that put the lash upon him, if such a misfortune should ever fall to your lot. I ask you to protect these people, as you would protect yourself, or your son or brother, and that is all. I do not care to make any lengthy speech upon this subject and I will submit the matter to this Convention and its conscience.

MR. CUNNINGHAM—I yield to no man in his desire to be both philanthropic and humane, and upon the question that is under discussion, I think my public record shows that I am in the line of humanity. If the gentleman from Mobile had introduced an amendment prohibiting any person convicted of a criminal offense in this State, from being leased or hired to any contractor I would have cheerfully voted for it and perhaps, would have asked for additional time over and above the ten minutes to present the argument as to why it should be done. The matter under discussion, however, is a mere question of discipline. I speak not from theory, from newspaper hearsay or from any abstract principles of philosophy or science, but as an observer of the matter of discipline in the management of convicts in the State of Alabama, and I want to say, and I say it deliberately, that the lash is the most humane, and at the same time the least degrading method of maintaining discipline that the present authorities can possibly devise or allow.

MR. JONES (Montgomery)—How about bread and water, I will inquire of the gentleman?

MR. CUNNINGHAM—The gentleman offering the amendment offers no substitute for the lash and the gentleman from Montgomery asks how about bread and water.

MR. WHITE—Will the gentleman from Jefferson allow a question?

MR. CUNNINGHAM—As soon as I answer the question of the gentleman from Montgomery.

THE PRESIDENT—We have fallen into a rather informal way of carrying on the discussion. I believe the usual rule is when gentlemen desire to interrogate the speaker, that they address the chair. Does the gentleman consent to be interrupted?

MR. CUNNINGHAM—I will answer the gentleman in a moment, as soon as I answer the question of the gentleman from Montgomery.

According to my personal observation of the various methods that have been tried, bread and water, with or without a dark cell, and anyone at all familiar with the laws of physiology knows that

the continued use of bread and water is not merely a punishment, but results in a change of the bodily conditions of the man in such a way as to invite disease. In the first place, if continued for a sufficient length of time it will produce scurvy, and even if stopped short of that time, it invites especially the invasion of contagious diseases, and more especially tuberculosis. Indeed, any condition that is thrown around the convict that takes away from him the very best nourishment and the very best possible hygienic surroundings, invites the invasion of that particular disease. Not only that, but the records of your penitentiary will show that notwithstanding the precaution taken in regard to these matters, that from forty to sixty per cent of the mortality of your convict population is due to tuberculosis. A few years ago the dark cell was adopted for the purpose of trying to control certain very unmanageable convicts. That was found to be unavailing and ineffectual. Carrying out the instructions of State officials, their arms were suspended in this position above their heads, and I deliberately, on my own authority, after a short time, had them removed, for the reason that it would undoubtedly have resulted in death. My experience has shown that particular order of punishment, the suspension of the hands above the head is not only ineffectual, but it is the reverse, and, in reality, it renders the convict still harder to manage, and, as a rule, more or less damages his physical condition.

Now, I agree with the gentleman from Mobile that to delegates upon this floor, without being convicted, a flogging would probably mean death, but they recognize the fact that convicts are there in obedience to the law, and that there are certain rules of discipline which they must observe. They recognize the fact that if this discipline is violated that there must be some method or some means of punishment. Now, I undertake to say from my observation that ninety-nine out of a hundred would prefer the punishment now allowed by law, than to either the dark cell or to the bread and water treatment. It would not be out of place to say there has been a wonderful revelation upon this subject so far as my observation goes. The time was when an unlimited number of lashes could be placed upon the naked bodies of convicts. That was not only inhuman and brutal, but possibly in some instances it may have resulted in death. But that has all been changed. The law today is fifteen licks with a strap of a certain width and weight, applied over the clothes usually worn, which, I will say, in the winter season embraces about two pairs of pants at any rate. A convict cannot be whipped upon his naked body except by order and in the presence of a State official. State officers are not always particular upon this question. Sometimes they get very humane and perhaps they have not correct ideas upon questions of discipline, and they become careless upon this question. The result of it is fighting among the convicts, and, to my

personal observation, there are three or four convicts killed almost every year by fellow convicts, and it results because there is not a proper enforcement of discipline. Then, again, a State officer will come along and he will make up his mind to break up this condition to affairs, and he does it with his presence and by his order inflicting the punishment with the lash, and the infliction of this punishment by some properly constituted authority immediately results in a great reformation and stops the fighting among this class of men.

Now there is a question that appeals, I presume, to the business men upon this floor. Your convict system, Mr. President, is not what it ought to be, nor will it be what it ought to be so long as the lease system is continued, there is a practical business proposition is this: If you adopt a dark cell, or if you adopt bread and water, or some other form of punishment, humane in appearance, but actually inhumane in its application, who is going to pay for these men while they are undergoing this milk and cider punishment. There can be but one answer to that proposition. It must come out of the treasury of your State or out of the treasury of your county. I believe, Mr. President, that the amendment of the gentleman from Mobile ought not to be adopted. I believe it is an injury to the convicts themselves. I believe no effectual substitute can be offered that will take the place of an ordinary humane lashing. So far as its mental effect is concerned upon the delicate, refined, cultivated white man. I am willing to admit it might prove somewhat depressing and demoralizing, but it is very rare that we get a man of that character in the penitentiary, and when he goes there, Mr. President, his pride in observing discipline controls him, so that it is the exception when a man of that character has to be punished in any way. This is all that I have to say upon the amendment.

MR. WHITE—I want to ask the gentleman a question.

MR. CUNNINGHAM—I ask the gentleman's pardon. I had forgotten.

MR. WHITE—I ask the gentleman from Jefferson if it is not a fact that these convicts are beaten because they do not comply with the tasks that have been allotted to them in the mines?

MR. CUNNINGHAM—There are various things, Mr. President, for which whipping is done in the penitentiary. That is one, but statistics can be obtained upon this subject accurately, by referring to the Convict Department in this building. I can state from my personal observation that a majority of the whipping is done for the violation of discipline in regard to conduct, such as fighting, gambling, and things of that character.

MR. LOMAX—This is a matter which, if one will observe the argument of the gentleman from Mobile, is purely one of Legis-

lative detail. It is a matter that can be corrected in the Legislature and I do hope the Convention will not burden this bill of rights with legislative enactments. I move to lay the amendment of the delegate from Mobile on the table.

MR. PILLANS—Of course I can make no response. I trust it will not be laid upon the table—

MR. LOMAX—Of course, if the gentleman desires to have an opportunity to reply, I do not want to cut off debate or move to table. In order to give the gentleman an opportunity to speak, I will move the previous question on the amendment.

THE PRESIDENT—Does the gentleman withdraw the motion to table?

MR. LOMAX—I will with the leave of the Convention. I do not care to cut off debate.

MR. BEDDOW—Mr. President, again I heartily agree with this amendment offered by the gentleman from Mobile to amend the Bill of Rights, and again am glad to hear the gentleman from Jefferson say if an ordinance had been introduced before this Convention to prevent the hiring of convicts under the lease system that he would heartily favor such a proposition, and I say before this Convention adjourns, we will probably give him an opportunity to assist us along that line.

The gentleman from Jefferson says that the lash is the most humane manner by which discipline can be enforced in a convict camp. If it is the most humane, Mr. President, I know of nothing that to my experience and to my observation can be worse. I say authoritatively that three-fourths of the whipping that is done in convict camps in this State, is done by reason of the failure of the convict to come up to the high task that is put before him in the performance of his daily work. For 365 days in the year he is expected to work, Sundays, Christmas Day, and the Fourth of July excepted. He works in the mines, where free labor has the opportunity to take a little respite from its labor in case of sickness, where in case he is worked down, he can go home and stay with his family a day or two, but to these poor unfortunate individuals that are being sent to Jefferson County, and worked in its mines, 365 days in the year no such right or opportunity is given. They are sent there, they are hired out to a class of people whose profit comes from the hardships of the convict. The less they give him to eat, the more they make. The most days he works in the year, the more it is in their pocket book, and so it is that they are punished to the extent that I speak of for the failure to come up to their daily tasks. It may be said that these men cannot be whipped unless the inspectors are present. I know that that is not true, because the only time at which the inspector is required to be present when these men are punished, is when they are asking

that they be punished by twenty-one lashes upon the bare skin. There is not a night that passes in Jefferson County, but what from twenty-five to 300 of these unfortunates are whipped without the presence of anyone except the officers of the company, whose money comes through the labor of those poor unfortunate creatures.

MR. CUNNINGHAM—Will the gentleman permit a question?

MR. BEDDOW—Yes.

MR. CUNNINGHAM—How many did you say?

MR. BEDDOW—I say all the way from twenty-five to 300.

MR. CUNNINGHAM—I want to emphatically contradict that as far as the Pratt Mines are concerned—

MR. BEDDOW—But what do you say about the county?

MR. CUNNINGHAM—I have no personal knowledge outside of Pratt Mines.

MR. BEDDOW—I would like for gentlemen who interrupt me to speak of matters within their personal knowledge.

MR. BAREFIELD—I will ask you if the State don't appoint the man who does this whipping?

MR. BEDDOW—I say to you that the State appoints them on the recommendation of the company which pays him. That is the way it is done. The company selects the man that they want to inflict the punishment, and they recommend him and he is almost always appointed.

MR. SAMFORD—If you do away with the punishment now permitted, will you suggest some punishment that will take the place of it?

MR. BEDDOW—If you had seen the poor unfortunate creatures that I have, with the blood whipped out of them, with their backs bruised and mangled, you would say to me that any other punishment would be preferable. If you had seen like I have seen, men sick going to the company's physician pleading his illness and telling him he was sick and unable to do his work, and then to be scourged into a mine where he had to crawl on his hands and knees to get to his work, and then be brought out dead, then you would agree with me.

MR. SAMFORD—Will the gentleman permit an interruption?

MR. BEDDOW—I will.

MR. SAMFORD—If you had been so humane then as you are now, why did not you prosecute that official before the grand jury of your county.

MR. BEDDOW—It was not my business to prosecute people before grand juries of the county, and I will say that all of those who were present were not State officials or other persons, but were employes of the company, and in the pay of the company, and they were not hunting prosecutions of that kind.

Now, Mr. President and gentlemen of the Convention, these men are often sent up on short sentences, and it is not an unusual thing for a man having a short sentence of thirty days to go to the mines for some petty offense, and when he gets there a chunk of slate may fall on him and crush his leg. A man may suffer death for a petty offense, and I say the best way to meet this condition is according to the suggestion of my friend from Jefferson. Let us inaugurate a system here that will not only prevent inhuman punishment to these unfortunate individuals, but let us, while we are assembled, pass an ordinance that will require the State of Alabama within the next three or four years to take every convict out of the mines and not allow them to be hired to people whose monetary considerations control their treatment of these unfortunate convicts. I heartily concur in the amendment proposed by my friend from Mobile and hope this Convention will adopt it.

MR. ROGERS (Sumter)—I think perhaps the gentlemen who are picturing the evils of the convict system are overdrawing it to some extent. The man I left at home in charge of my negroes, is a negro himself, and an ex-convict, and I have talked with him some times upon this question, and asked him about this whipping. He says, "Yes, boss, they do whip them up there and they ought to be whipped." He says they whip them because they will not work, and because they fight and because they steal and gamble, but he says if a man goes there and tries to do his duty he is treated just like he is everywhere else. They expect him to do his work and no more. Now everybody knows that the great bulk of convicts in this State are negroes. Everybody who knows anything about the character of a negro, knows that there is no punishment in the world that can take the place of the lash with him. He must be controlled that way. He inherited that peculiarity from his ancestors when he came from the shores of Africa, where they provide that kind of punishment, and if we take away the lash from this convict system, we will destroy the efficiency of the system. I do not know what these humane gentlemen want to do with the convicts, in case we cannot control them. There is certainly nobody who is going to take them that cannot control them, and this bread and water business, and dark cell puts me in mind of a system of something of that kind down in Mexico. A friend of mine who goes there frequently, says that there is no punishment on earth that is so awful as the kind of punishment they have in Mexico. There they put the convicts in a hole, where the sun can shine on him, instead of whipping him. The law in



Mexico does not allow the convict to be whipped, but they take these people and dig a hole out where the sun can shine on them, and they let them stay there until they are conquered. I think it is infinitely better to whip these negroes or white men than to have such punishment as that. And gentlemen, let me tell you, this maudlin sentiment about a man that gets into the penitentiary is all foolishness. That is all there is to it. A man that goes to the penitentiary ought to be punished if he deserves it, and he won't get the punishment unless he does deserve it.

MR. PILLANS—Suppose he plays cards in what is denominated a public place, which may be a very private place under the decisions of our court, and he cannot be fined but must go to the penitentiary.

MR. ROGERS (Sumter)—Yes, a man that violates the law ought to go to the penitentiary. I play cards myself and may be convicted for it some time and have to go to the penitentiary, but I will never get up and grunt about it when I am violating the law. You respect the laws of this country and you stay out of the convict camp; you break the laws, and you go there and receive the punishment that you would expect to have inflicted upon you.

MR. WILLIAMS—I now move the previous question but will give way to the gentleman from Mobile if he will agree to withdraw it.

MR. HOWELL—Before that is done, I want to ask the gentleman from Jefferson (Mr. Beddow) if I understood him to say they worked 365 days in the year?

MR. BEDDOW—I excepted Sundays, Fourth of July and Thanksgiving.

Mr. Pillans here arose.

The Chair will call the attention of the gentleman from Mobile to the rule.

MR. PILLANS—Only speak one time on a subject?

THE PRESIDENT—Yes, sir.

Mr. O'Neal asked unanimous consent for the gentleman from Mobile to submit a few remarks and the consent was given.

MR. PILLANS—I thank the Convention and the gentleman for the opportunity. I have never been a convict nor has any kinsman of mine ever been a convict. Certainly I have never known a white man of my blood to be whipped. If I had instead of being a member of this Constitutional Convention I should be confined in the penitentiary as a murdered. For with the blood in my veins and with the spirit that actuates me, I would have had the irresistible desire to spill the blood of any man who would visit

such a disgrace upon any of my blood. It is so with all of us. We are all Southerners. And if the poor negro can stand the flogging better than we can it does not make us any the less restive under it. Is it possible that we who have gone beyond the Russian knout and the Delaware whipping post, who are unwilling to use the lash as part of our methods of criminal punishment, I was about to say to the introduction of a system of gally slaves, but I will say to continue such a system. And I have been amazed to see men of as much refinement as myself from Ensley stand up and tell you that men like to be flogged.

MR. CUNNINGHAM—I certainly did not state such a thing and I cannot conceive how the gentleman should interpret my remarks in that way. I said as compared with other forms of punishment which, under my personal observation, had been practiced, it was better.

MR. PILLANS—Did the gentleman say better or that they liked it better?

MR. CUNNINGHAM—Better.

MR. PILLANS—This matter of flogging has come before the American people, and has been abolished in our State codes. It has been abolished in the American navy, mercantile and martial. It has been abolished by all of the great States of the Union except a few of us who are occupying a backward position and have stood on a mere matter of dollars and cents. For that is what it amounts to. The knout is a well known method of punishing and correcting persons in this age. Did any of you read the article by Kellond, printed in Harper, I think, describing the punishment by the knout in Russia? And did you ever read an article which described the Alabama system more perfectly? Did you not feel indignant that such things could be tolerated in this age. Why, only a few weeks ago a Governor of this State sent an inspector, I think it was Dr. Bragg, to look into an affair called a convict camp in Monroe County. His report was printed in the newspapers and doubtless every gentleman of you read it. He stated that there were some sixty odd men in a single pen and a house with four walls and no openings for ventilation except a door which had to be locked at night. Think of human beings being confined in such a place. Without the ordinary conveniences which are necessary where men are gathered. They lay along the two sides of the house without air in the midst of the foulest and most unmentionable things. That is the result of the conditions in Alabama. I remember one instance which I can cite to you as to the effect of this system. There was a man to whom I was talking once, and he was the first one to call my attention to the flogging of white men—in a conversation with him I asked him why he flogged the convicts. I knew it was unlawful and I said why do you flog these negroes, and he said. "Oh, we flog them, and white men too."

That man afterwards stood his trial in Arkansas for murdering a prisoner. Graduated from Alabama schools, he went to Arkansas and finally reached the penitentiary for manslaughter. He escaped from the penitentiary and went on his career of taking care of people, I suppose. That man was a product of the Alabama system. I take it that nobody who knew that man would come to the conclusion that he was innately a bad man, that all that was the matter with him was the result of being afflicted with the power given to him by the unfortunate state of affairs that existed in Alabama.

We are asked how we can punish them. It has been stated by the gentleman from Jefferson that all these cases of flogging are for failure to perform some task. The man I had in mind was a man unable to perform a task that the negro from Sumter County performs.

MR. ROGERS—I thought these convicts were numbered as to their capacity and that certain classes were given certain tasks and certain others given others, I would not expect your friend to perform the task my negro performs.

MR. PILLANS—He is not my friend.

MR. CUNNINGHAM—Does the gentleman from Mobile understand that these convicts are classed and tasked by the State?

MR. PILLANS—That was just stated by the gentleman from Sumter.

MR. CUNNINGHAM—Does the gentleman also understand that notwithstanding the classification by the State that the records of Pratt City will show that from fifteen to thirty are monthly taken from the mines by the company's physician notwithstanding the State says they are able to work?

MR. PILLANS—I know nothing of the details of that matter, but I am happy if the humanity of my friend has been penetrating enough to perform such noble work. I am not an encyclopedia of convict management. I have never burdened my mind and have never sought to learn how to manage convicts, but there can be no doubt that if other States manage convicts without the lash, we can do it, and it appears by the speech of one gentleman who is opposing the report that down in Mexico the peon is protected by law from the lash.

MR. LOMAX—I move the amendment offered by the gentleman from Mobile be laid upon the table.

A call for the ayes and noes by Mr. White was not sustained, and a viva voce vote being taken, the amendment was laid on the table.

Section 17 was read as follows:

17. That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great; and that excessive bail shall not in any case be required.

MR. LOMAX—That is the same as the old Constitution, and I move that it be adopted.

A vote being taken, the section was adopted.

Section 18 was read as follows:

18. That the privileges of the writ of habeas corpus shall not be suspended by the authorities of this State.

On motion, the section was adopted.

Section 19 was read as follows:

19. That the treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or his confession in open court.

MR. LOMAX—The word “the” following the first word “that” is incorrectly inserted, and I ask that it be stricken out by consent. I also ask to insert the word “own” before the word “confession.”

The consent was given, and both amendments made the section adopted.

Section 20 was read as follows:

20. That no person shall be attainted of treason by the General Assembly; and not no conviction shall work corruption of blood or forfeiture of estate.

On motion, the section was adopted.

21. That no person shall be imprisoned for debt.

MR. OATES—I desire to offer an amendment.

The amendment was read as follows: Amend Section 21 by adding thereto “except for willful and flagrant fraud.”

MR. OATES—I have but a few words to offer in support of that amendment. I remember well when we used to have a law which imprisoned a man for debt, and I remember very well when it was abolished, and I have observed how it has worked since, and, as a general proposition, I am decidedly in favor of it. But there are cases of the most flagrant fraud in which parties have

no remedy against the perpetrators, and this provides that in cases of willful or flagrant fraud, there may be imprisonment for debt. Of course that leaves it to the Legislature. And they might provide proper penalties.

MR. CARMICHAEL—I move to lay the amendment on the table.

A vote being taken, the motion was carried, and, on motion, the section was adopted.

Section 22 was then read as follows:

22. That no power of suspending laws shall be exercised by the General Assembly.

On motion, the section was adopted.

Section 23 was read as follows:

Twenty-third—That no ex post facto law, or any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the General Assembly; and every grant of a franchise, privilege or immunity, shall forever remain subject to revocation, alteration or amendment.

MR. LOMAX—There are two changes made in that Section. One is by inserting the word “exclusive” after the word “irrevocable.” The other is by adding at the end of the Section that all franchises, privileges or immunities shall be subject to revocation, alteration or amendment. I move the adoption of the amendment.

MR. SAMFORD—May I ask what was the object of that?

MR. LOMAX—The object of the word “exclusive” was to prevent the Legislature from granting any exclusive or irrevocable franchises to any one. And the object of the other is to make more specific and definite the proposition that all franchises granted are revocable by the will of the General Assembly.

GENERAL HARRISON—What was the reason of the Committee putting in that latter clause?

MR. LOMAX—Simply to make more specific and definite the proposition that franchises are revocable at the pleasure of the power that grants them.

Upon a vote being taken the Section was adopted.

Section 24 was read as follows:

Twenty-fourth—That the exercise of the right of eminent domain shall never be abridged nor so construed as to prevent the

General Assembly from taking the property and franchises of incorporated companies and subjecting them to public use the same as individuals. But private property shall not be taken or applied for public use, unless just compensation be first made therefor; nor shall private property be taken for private use or for the use of corporations, other than municipal, without the consent of the owner; provided, however, that the General Assembly may by law secure the persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by person and corporation of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner, and, provided that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporation, other than municipal or for the benefit of any individual or association.

MR. LOMAX—There is no change in that section and I move that it be adopted.

Upon a vote being taken the section was adopted.

Section 25 was read as follows:

Sec. 25. That all navigable waters shall remain forever public highways, free to the citizens of the State, and of the United States, without tax, impost or toll; and that no tax, poll, impost or wharfage shall be demanded or received from the owner of any merchandise or commodity for the use of the shores, or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be expressly authorized by law.

MR. LOMAX—There has been no change in that section and I move that it be adopted.

Upon a vote being taken the section was adopted.

Section 26 was read as follows:

Sec. 26. That the citizens have a right in a peaceable manner to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address or remonstrance.

MR. LOMAX—There has been no change in that section and I move that it be adopted.

Section 27 was read as follows:

Sec. 27. That every citizen has a right to bear arms in defense of himself and the State; and it shall be the duty of the General Assembly to define, by law, small arms, and regulate the bearing of the same.

MR. LOMAX—The latter part of that section as added “and it shall be the duty of the General Assembly to define by law, small arms and regulate the bearing of same,” was adopted at the suggestion of some gentleman who introduced an ordinance to that effect in the Convention with a view of calling the attention of the Legislature to the evil and practice of carrying concealed weapons and to adopt more stringent remedies than exist today.

MR. O'NEAL (Lauderdale)—State whether they would have the right to prevent a man from carrying a pistol?

MR. LOMAX—I am inclined to think they have. But it was the view of some of the members of the committee who introduced the ordinance, to put this in the Constitution with a view of attracting the attention of the Legislature more particularly to the practice of carrying small arms and perhaps of carrying small arms might to some degree check the practice of carrying concealed weapons, which makes it the duty of the Legislature to do it.

MR. SAMFORD—I ask if the committee don't object that the last part of the section be stricken out.

MR. LOMAX—The only difference is, while the Legislature has the power now, it makes it the duty of the Legislature to define small arms and regulate the bearing of the same, and the idea was that putting it in the Constitution and the Legislature having the power to define what a small arm is, it might in some way adopt some measures by which the evil of carrying concealed weapons would be remedied.

MR. PETTUS—I can understand what the committee means to do by making it the duty of the General Assembly to regulate the bearing of small arms, but I cannot understand what it hopes to get at by making it the duty of the General Assembly to define small arms.

MR. LOMAX—The idea was that the legislature might include some small arm that is now a dangerous weapon to carry about the country that is not in the statute against carrying concealed weapons.

MR. O'NEAL (Lauderdale)—Under that provision could not the legislature have the right to define an air-gun a concealed weapon?

MR. REESE—I offer an amendment.

The amendment was read as follows: “Strike out all of the section after the word “State” in the first line.”

MR. REESE—The purpose of that amendment is to leave this section where it was in the old Constitution of 1875. Mr.

President, it would be well to leave some of these provisions like they used to be. It would be well to send some of the sections back to the people so they can see an old friend with which they are acquainted. I fail to see where the explanation given by the Committee comes in. The legislatures have legislated along this line since I have been recollecting anything about it. Judges have charged grand juries, and the Circuit Court Judges of the State have charged the communities in which they held their courts about the evil practice of bearing small arms. I hardly conceive that the explanation that has been given explains. It looks to me like there is a nigger in the woodpile somewhere.

MR. PETTUS—I would like to ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield?

MR. REESE—Yes, sir.

MR. PETTUS—I would like to ask if this question is in relation to the "razoo" that the nigger in the woodpile has?

MR. REESE—I expect it is, but the legislature can reach this question without this provision in the Constitution.

MR. O'NEAL (Lauderdale)—Under this provision it shall be the duty of the General Assembly to define by law "small arms." Would not they have the power to define an air gun or small rifles as a small arm and prevent the carrying of the same by the people of the State?

MR. REESE—I expect they have the right to do that now under the law. Under this provision they may prescribe that when you carry a pistol you must carry it in your hand, or when you carry any other gun, they might prescribe which hand you would carry it in, and they might make you do all sorts of things. Mr. President, why not act honestly and squarely with the people. If this Convention desires to stop the people from carrying arms and desires to strike the clause out of the Constitution of Alabama, let us come up like men and say so, and I believe I would vote for it, but do not let us deceive them. Do not let us stick a thing in there which may be susceptible of different meanings, but let us say candidly what we mean. I for one, oppose this, because I do not know what it means. After all of the explanation that has been here, as it happened on this floor on one other occasion before, in the consideration of this report, we were requested to put in something that we did not know the meaning of and the distinguished and able lawyer who is the Chairman of the Committee did not know the meaning of it, and I object to putting this thing in because I do not know what the meaning of it is.



MR. LOMAX—Under the present Constitution do you think you can levy a privilege license on the right to carry a pistol?

MR. REESE—I cannot say.

MR. JENKINS—Under this clause in the present Constitution, if the legislature was to levy a license of say \$25 or \$50 for carrying a pistol, do you believe that they could do it, under this provision saying that a man has a right to bear arms?

MR. REESE—I have not investigated that subject. I assume that you could not levy a tax on it, because the last Legislature levied a tax on everything they could, and they did not levy a tax on the carrying of pistols.

MR. JENKINS—I will say to the gentleman from Dallas—I see he takes his seat—but I will say to him anyhow, that the only reason they didn't put a tax upon carrying pistols was because the Constitution did not allow it, and I believe that if we ever can get a tax on pistols, in the shape of a privilege license, that you will abolish the carrying of concealed weapons, and not until you get that license will you ever do it.

MR. WHITE—That would give a man with money the right to carry a pistol and a poor man could not carry it.

MR. REESE—I am willing to abolish it.

MR. JENKINS—No man should be allowed to carry it without a license.

MR. GREER (Calhoun)—I move to lay the amendment offered by the gentleman from Dallas on the table.

MR. REESE—I will state to the gentleman that it is not my amendment. It is the amendment of the gentleman from Chambers who desires to speak on it, and I will ask him to withdraw the motion.

MR. GREER (Calhoun)—If I withdraw the motion, will the gentleman from Chambers renew it?

MR. HEFLIN (Chambers)—I hate to renew a motion to lay my own amendment on the table, but I will do it.

MR. GREER (Calhoun)—I withdraw it if you will renew it.

MR. HEFLIN (Chambers)—I thought that the section as reported by the committee ought to be amended. I thought it should be left as it is in the old Constitution. I thought, and think now, that the reasons given by the committee for the amendment were not good. I see no reason why the section in the old Constitution should be changed. It reads after this manner: Sec-

tion 27, That every citizen has a right to bear arms in defense of himself and the State. We have had this section in the Constitution since 1875, and I have never seen any evil growing out of this right being lodged in the fundamental law of the State. I can see no good which is to come from the report of the committee changing this section. The section is short. As the gentleman from Dallas has said, let us go back to the people of the State with something that they may recognize as an old friend in the Constitution when we go before them and submit this Constitution for their ratification. I do not desire to speak further on the question. The gentleman from Calhoun has requested that I make a motion to kill my own amendment. I therefore do so, Mr. Chairman, and move to lay the amendment on the table.

Upon a vote being taken upon the motion to table the amendment of the gentleman from Chambers, a division was called for, and, by a vote of 47 ayes and 47 noes, was announced.

MR. HEFLIN (Chambers)—I call for a verification of the vote.

THE PRESIDENT — The chair has not voted, and has a right to vote. The chair will vote against the motion to table.

MR. REESE—I move the previous question on the amendment.

MR. GREER (Calhoun)—On that I call for the ayes and noes.

THE PRESIDENT—The gentleman from Dallas moves the previous question, and the question is, shall the main question be now put?

The main question was ordered.

THE PRESIDENT—The question is on the adoption of the section as amended.

MR. REESE—I move the adoption of the section as amended, and I move the previous question.

THE PRESIDENT — Does the gentleman insist upon the previous question? The Convention seems ready to vote.

The call for the previous question not being insisted upon, a vote being taken, the section was adopted.

Section 28 was read as follows:

28. That no standing army shall be kept up without the consent of the General Assembly, and, in that case, no appropriation for its support shall be made for a longer term than one year; and the military shall in all cases and at all times, be in strict subordination to the civil ower.

MR. LOMAX—I move the adoption of that section.

Upon a vote being taken, the section was adopted.

Section 29 was read as follows:

29. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

MR. LOMAX—I move the adoption of that section.

Upon a vote being taken, the section was adopted.

Section 30 was read as follows:

30. That no title of nobility or hereditary distinction, honor, privilege or emolument, shall ever be granted or conferred in this State; and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

Upon a vote being taken the section was adopted.

Section 31 was read as follows:

31. That immigration shall be encouraged, emigration shall not be prohibited, and that no citizen shall be exiled.

MR. JONES (Montgomery)—I have an amendment.

The amendment was read as follows: Amendment to Section 31 of the report of the Committee on Declaration of Rights. Amend Section 31 by adding at the end thereof, the following words: "No well person shall be compelled to exile himself from the State to secure refuge from disease, when the health authorities of any County are willing to allow him refuge in its borders.

MR. JONES — Before making any remarks on the amendment, I would like to inquire of the Chairman of the Committee whether the Committee is opposed to its adoption. If they are not, I do not wish to speak. If they oppose it, I do.

MR. LOMAX—The Committee is opposed to the amendment. At least as Chairman of the Committee I am opposed to it. Of course I have not the authority to speak for the balance.

THE PRESIDENT—The question is on the amendment of the gentleman from Montgomery to the section as reported by the Committee.

MR. JONES (Montgomery)—I cannot conceive of any plausible objection to the amendment, unless it falls under this head in the preliminary report under which it says "Some of the ordinances rejected by the Committee failed of adoption because it was evident that the object sought to be obtained could be se-

cured by legislative action, and hence they were not proper matters for Constitutional enactment."

That is true of nearly every declaration in the Bill of Rights. A prudent legislature could and would always secure these rights there announced by legislative enactment. There are some matters which the people always wish to withdraw from legislative control. There are matters paramount and fundamental in their nature, which it is always deemed proper to give a permanent place in the Constitution of a State. This, and not whether legislation could effect the object determines whether the Declaration of Rights is the proper place for them.

Now, why do men love their government? Is it altogether because of the soil or its fertility, the mountains and the valleys, its rivers, the beauty of its scenery, or the climate? Is it altogether for its history? Is it altogether for its people? These and each of them add much to love of country, but at last the paramount consideration in every man's heart when he loves his government is, the measure of protection it affords to life and liberty.

We have had in recent years a flagrant example of the need for some such provision in the fundamental law. I will not say who was the author of the principle I condemn because I am not sure—it is of doubtful paternity. Here in Alabama, ever since the seashore was settled, when God in his providence allowed epidemics to come among the people the people of stricken cities have been allowed to go among their friends and neighbors for refuge, wherever it would not imperil the public health. There never was a day or an hour in Alabama before 1897 when a citizen of Alabama before 1897 lawed by the State of Alabama and turned over to the charity of strangers in other States when he sought refuge from a city in which there was an epidemic or contagious disease. Kindred and friends in localities where his presence would not harm had always been allowed to succor him in times of distress. We had yellow fever in Montgomery time and time again, and in Mobile, and there never was a day before 1897 when the State of Alabama declared all avenues of refuge in Alabama are closed to you. Every spot in Alabama is liable to infection. It matters not what the experience of communities may have been, and it matters not that they may know by actual experience that no danger could come to the public health or to its people by aiding you. I put the strong arm of Alabama upon you, and tell you if you are poor you may die where you are with the pestilence. If you are rich I will carry you through the State, and leave you a dependent upon the good will or the charity of strangers in neighboring States. Now, I ask if there is any wisdom in that? Is there any right in it? Is there any humanity in it? Is there any religion in it? For a brave people, a noble people, a people who have suffered so much as the Southern peo-

ple, and surmounted with such heroism so many trials, we have presented a most piteous spectacle to the people of the world, whenever some man has cried out "yellow fever." It seems then that society and government and christianity are all forgotten, and we become a set of savages. Much of that is due to men who claim to know most about it and who may know least, because they discovered what they call the theory of "portable yellow fever," and forthwith every little place sprung up with a shot gun quarantine. They would not bury the dead. They would not even give to the sick a cup of cold water or a piece of bread. We resolved ourselves into a set of heathen and savages and turn on our own flesh and blood. I have known a Board of Health in this good town of Montgomery to decide that a great mass of pig iron from Leake's foundry in New Orleans, which had been out in the country for three weeks on the cars, and reeking with carbolic acid, might endanger the health of this city, but that two intelligent physicians whom the city council sent to Louisville to inquire whether there was yellow fever there and who found it might come back here with impunity. In the last epidemic, Mr. **President**, with all this foolishness, and I think that is a soft term for it, when they would not let a man stop in the State, the Health Officer of Alabama was going in and out from the Capitol every day in actual contact with yellow fever, and then coming back here and mingling with our wives and children.

The thing was nonsensical. What is the good of such action? Take that blessed town of Opelika, and I say God bless her, for her people have never closed its doors. They know that yellow fever does not spread there and they opened wide their arms, as they also did in Tuskegee and other places in years gone by, to refugees; and yet the fiat of the State said you shall not stop there, you must go over to Georgia. What was the practical result? People went over to Georgia and came back to Opelika and stayed there. They spread all over Alabama. It was nonsense, it was worse than nonsense, it was crime, because it was the State of Alabama warring on women and children.

Only a few years ago a cry went up all over this continent, that finally brought on a war in spite of some of the most eminent statesmen in this country, because a foreign people were concentrated in cities to starve; and yet here in Alabama in 1897, the population of the three chief cities in Alabama were, by the dictate of the State of Alabama, compelled to stay here, men, women and children, and take whatever fate awaited them at the hands of a dread disease, if they could not go to other States, though shelter was offered in Alabama. Was not that worse than Spanish cruelty? They had the justification there that the government was warring upon its enemies, but here were the wives and children of our people and the citizens of Alabama, and it cruelly warred on them.

I do not propose to add but a few words more. I remember well when my friend on my right (Mr. Lomax) and some of the rest of us here were trying to do what we could for the people who remained in Montgomery. There was a young widow with two children, whose husband could not get to her. She had no employment here, and she had no place to stay. She wanted to get to her friends in the country and could not. Finally the money was gotten for her, so that she could get out of the State. She was a bright woman, a sensible woman and an emotional woman. I tried to find her letter in which she described her pride in Alabama and how she steamed through its borders in the night, with all the windows down, a brutal guard at the door to keep them from getting air. She said when she got into Columbus, Georgia, that though she had always loved Alabama she got down on her knees, Alabamian as she was, and "thanked God that she was out of Alabama."

I want to put this amendment in the Constitution, so that such a condition of affairs can happen no more. It is right and it is proper. It is not a mere legislative declaration. It is an utterance in defense of liberty, and for the protection of the defenseless people who have suffered these persecutions and these outrages. They will rise up and call you blessed, if you put it in the fundamental law, whether it is legislative or not.

THE PRESIDENT—The question is on the amendment offered by the gentleman from Montgomery.

MR. CUNNINGHAM—Here at the eleventh hour— —

MR. JONES (Montgomery)—I beg the gentleman's pardon, but I offered that ordinance and the committee rejected it.

MR. CUNNINGHAM—At any rate, without any official notice that this Convention would be called upon to consider so serious a question, we are brought face to face with an amendment which proposes to destroy the efficiency of the quarantine system of our State. That amendment is presented by a gentleman of profound learning in the law, of unquestioned patriotism, of boundless sympathy for the oppressed and the unfortunate everywhere. With a heart whose every impulse is prompted by sentiments of the highest conception of humanity and benevolence, it strikes me that before voting upon the proposition we should give it the wise and serious reflection that the subject demands.

I want to say, and I say it deliberately that the introduction of yellow fever, of the plague, of cholera, or typhus fever (not typhoid understand me, but typhus fever) and other forms of contagious and infectious diseases that have been met with in this country, is the result of one of two things, an inefficient quarantine at the point of departure, or an efficient quarantine at the point of landing.

MR. JONES (Montgomery)—Will my friend permit a question?

THE PRESIDENT—Will the gentleman yield to the gentleman from Montgomery?

MR. CUNNINGHAM—If the gentleman will note his questions, I will answer them in the last two minutes of my ten.

Now, Mr. President, the mouth of the jug to the State of Alabama in the matter of the introduction of foreign diseases, is the city of Mobile, and if this amendment is adopted, if I properly interpret it, the special Quarantine Board of Mobile Bay, which consists of commercial interests largely, with one or two members of the Board of Health upon it, will have the authority, notwithstanding the fact that the Board of Health prohibits it, to raise any quarantine that may have been established in the city of Mobile by the State Board of Health, and if there should be an epidemic of yellow fever, starting anywhere in the State of Alabama, there should be a county in this State in which there is no County Board of Health, and there are such counties, who will receive persons from infected places, then refugees from these infected districts, sorrowfully and distressed as they may be would have the right to go into these communities, and introduce yellow fever with their persons and with their baggage.

It is well that this Convention should know, and I will briefly inform them as to organization of the Board of Health of this State. The Board of Health of the State of Alabama consists of the Medical Association of the State. This has a Committee on Public Health consisting of a certain number of gentlemen, elected by the Medical Association. These gentlemen in turn elect a State Health Officer, who is paid out of the State Treasury of Alabama. The County Board of Health consists of the county medical societies in each county. Those county medical societies elect a Committee of Public Health, and also a County Health officer, who becomes the executive officer of the County Board of Health. Now I undertake to say, with all due respect to the County Boards of Health of the State of Alabama, that they have not the knowledge neither theoretical or practical in matters of quarantine. The State Board of Health, on the contrary, and especially its State Health Officer, has not only an opportunity and privilege, but it is his duty to study and post himself upon all of these questions, and thereby to qualify himself for the discharge of these delicate duties.

Now if the State Board of Health declares quarantine against any county or city in the State of Alabama, the Governor has to order it. It must be done through the Chief Executive Officer of the whole State of Alabama, and if he does not approve it, then it falls to the ground and does not become operative as a

matter of fact. The question now is, shall the County Board of Health, consisting of five censors in each county, override the State Board of Health, and the State Health Officer and the Chief Executive of the State of Alabama. That is exactly what this amendment amounts to. Though all of these may declare a quarantine, and may show the reasons why it should be adopted, and the Chief Executive may order it, yet a little County Board of Health can throw open the doors of any county in the State to this unfortunate woman with her two children, and she may become the source of infection and destroy the lives of a thousand women and children that otherwise would be protected.

Therefore, I say while it appears inhuman to the unfortunate refugee, that it is an inhumanity to the unfortunate citizen in that community which has no protection from these infectuous and contagious diseases, and for that reason I think that this amendment should not pass.

I am perfectly willing to leave the doors wide open for the General Assembly to regulate these matters as they see fit, but I am opposed to placing in the Constitution an inhibition that will forever prevent, or will prevent until amended, which in all probability would not be for many years to come, any progress in the prevention of disease in this State. There is nothing better established in medical science than that these diseases are produced by microbes or bacteria scientifically speaking, and that they can be communicated from person to person, and by articles that have come in contact with the person. Some of them can be communicated through the atmosphere, such as la grippe; dengue and relapsing fevers, over which quarantine has no control. Then I say that we should not tear to pieces the system and regulation and law which has been the result of the study and experience of the medical profession not only in Alabama, but of the whole world, for centuries, by the impulse of an honorable, sympathetic and great hearted ex-Governor of the State of Alabama, who knows nothing more about the principles of quarantines and disease than the present speaker knows about the law.

MR. JONES (Montgomery)—Will you allow me to ask you a question?

MR. CUNNINGHAM—Sure, I think I have about two minutes left.

MR. JONES—I will yield to the gentleman from Mobile.

MR. PILLANS—I desire to ask the gentleman, he says that the ex-Governor knows nothing of how that yellow fever is carried from place to place; can the State Board of Health be asserted to know any more about it as a certainty than the ex-Governor?



MR. CUNNINGHAM—In answer to that question I will say that the question itself shows a patent want of appreciation of the advances of civilization. We were told today on this floor that the jury system has existed for centuries and the legal profession has failed to change it. I want to tell you that modern medicine is of recent origin and it stands today almost as an exact science. And upon these great questions the profession is not divided as our great legal lights are as to what constituted the rights of citizens of Porto Rico or the Philippines, or the carrying of concealed weapons. The medical profession is practically unanimous upon the question, and I will be pardoned for saying that the medical profession has produced brains equal to that of any other profession. They seldom have as much money because they deal with the misfortunes of humanity while the lawyers deal with the rascalities of life.

MR. HARRISON—Will the gentleman allow a question?

MR. CUNNINGHAM—Yes, sir.

MR. HARRISON—I understood you in your remarks to say that one of your objections was that the County Boards would overrule the State Board. If there is no difference of opinion amongst you, then is there any danger to apprehend from this source?

MR. CUNNINGHAM—I will answer that question of the gentleman by saying that the County Boards of Health, like every other set of public officials and every other relation in life, may be more or less influenced by certain circumstantial conditions; the influences of local environment address themselves to their consideration the same as other men. Doctors are not particularly exempt from these collateral influences and incidental circumstances any more than the legal profession.

I will not answer the question of the gentleman from Montgomery.

MR. JONES—I would like to ask my friend if there is any great State in Europe or in this country which now maintains a quarantine against places; do they not maintain quarantine against individuals and isolate them if they are found suffering with contagious diseases?

MR. PILLANS—Yes, I will suggest that Turkey does.

MR. JONES—I meant to say civilized countries.

MR. CUNNINGHAM—In answer to that question the quarantine system of European States is so good that it is very seldom indeed that there is an introduction of disease prevailing in any other State, and therefore the question of local quarantine is practically a matter of no importance.

MR. JONES—How about the city of New York?

MR. CUNNINGHAM—I do not know anything about the city of New York except that it is perhaps, beyond the yellow fever line. I would say this much to the gentleman, however, that if the plague was prevailing in Montgomery he would find himself unable to land in the city of New York.

THE PRESIDENT—The time of the gentleman from Jefferson has expired.

MR. LOMAX—I do not care to consume much of the time of this Convention upon this proposition. I do not know exactly how to characterize it, but the almost contemptuous way in which my distinguished friend from Montgomery, spoke of propositions being advanced here upon ordinances or amendments which contained matters of legislation, I insist before this Convention that the proposition contained in the amendment of my friend from Montgomery is absolutely in the control of the General Assembly, and needs no constitutional enactment in order for the legislature to control it. The whole matter of quarantine is in the hands of the legislature. There is no necessity of putting in this Constitution anything about a quarantine. Either quarantine laws are wrong, if the eminent, able and distinguished physicians who have made a lifetime study of this question have shown that they are absolutely without brains and do not know what quarantine is when they see it, then it is in the power of the General Assembly to say that the Board of Health shall be abolished, and that there shall be no more quarantine, and men shall not be required to stay out of the State after they have run out of it away from an epidemic.

Now how did these people get out of the State that my distinguished friend talks about? Were they forced to go? They were not forced to go except that other quarantine rules which says that the more people you get out of a community at a time of epidemic, the less you leave for the disease to feed upon, and therefore the quicker you can stamp out the disease. But they do not have to be told that. Let the cry yellow fever come up in any community in Alabama and a mad, wild rush begins for other places and for other States, and nothing but an army with gatling guns could stop it, and when you have thus voluntarily carried them out of the State, because the quarantine is kept in force, and they say for a certain period of time you shall not come back into the State, we are told that that man is exiled and that we must put a clause in the Constitution to forbid it. It is a common practice and custom amongst quarantine officers, that at certain periods of an epidemic, after the quarantine has been in force for some time, and the necessity for extending it to the whole State may cease to exist they establish a marginal line at the edge of the dangerous districts, and let the people come into the non-in-

fect districts, and thereby reduce the extent of districts from time to time until the end of the quarantine comes. Now I do not pretend to know anything about quarantine. The result has been that the consensus of the highest authority is that the best way to prevent the spread of infectious and contagious disease is by quarantine. You have just heard a statement from a distinguished gentleman who understands the proposition. I do not.

MR. PILLANS—Will the gentleman allow me to ask him to name the authorities whether they are American authorities or European.

MR. LOMAX—I cannot name an authority because I have read them from time to time, and do not know what they are, but I think that I can name one who knows as much about quarantine as either the distinguished gentleman from Mobile or my distinguished friend from Montgomery, and that is Dr. Russell M. Cunningham of Jefferson County. (Applause.)

Now, I have gone beyond what I wanted to say. What I wished to say was this: I do not blame people from running from yellow fever. I wanted to run mighty had in 1897, but I felt like it was my public duty to stay here, and I stayed side by side with my distinguished friend there, and did what I could, but I wanted to run. I do not blame them from running, but when they do go, I say do not let us put into the Constitution a provision that shall say that we cannot keep them out until the health of Alabama is secure against infection. We owe a duty to our State more than we do to any supposed exile that has gone from her borders. I say, gentlemen of the Convention, that this is purely a question of legislation; that the whole matter embraced in this amendment can be enacted by the General Assembly of Alabama, and there is no reason why we should put into this Convention an amendment which gives to the word "exile" an entirely different meaning from what it has always had before, and which puts into the Constitution a matter that is purely, absolutely and exclusively a subject of legislative action. I think the amendment should be laid upon the table.

MR. HEFLIN (Chambers)—I want to say a word against the Convention usurping the functions of the Legislature of Alabama. I favor the report of the committee to leave this section as it is in the old Constitution. I believe, Mr. President, the amendment which says any well man or able-bodied man, I do not remember exactly how it reads, that by the consent of the health officer in any county, may go into that county, although he may come right from disease and may carry smallpox right into the community, should not be adopted. It may be that the health officer is related to those who live in the city, and who would like to get out among the hills, and these health officers,

by reason of their relation, or their friendship, against the will of the sovereign authority of the county, might extend an invitation to these gentlemen who live in the city where disease may be located, when the people of that county might rise up and say we do not want them to come into our hills and our homes nestling there, among our wives and children, because we want them free from this disease, and we do not want you officers to let these people come in here and run the risk of spreading disease in our county. Under that amendment, there is no power by which this can be regulated. The health officers can invite the city of Montgomery into Chambers County, and five thousand voters in that county might rise up, but they have got no relief whatever under that amendment, and I am opposed to it. I do not think that it ought to be incorporated in this Constitution. If the gentlemen insist that there ought to be any further law upon this question, let them submit it to the General Assembly of this State, let them take it up with the legislative bodies, as it is purely and wholly a legislative question. We ought not to take up the time of this convention with the consideration of legislative questions, and, Mr. President, in the hope that we will get through with this report this evening, I make the motion to lay the amendment upon the table.

And upon a vote being taken, the motion to table was carried.

THE PRESIDENT—The question recurs upon the section as reported by the committee.

MR. CUNNINGHAM—I move its adoption.

And upon a vote being taken, the section was adopted.

Section 32 was read as follows:

32. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

MR. SANFORD (Montgomery)—I desire to offer an amendment.

The amendment was read as follows: Insert the words "or county" after the word "State."

MR. HEFLIN—I move the adoption of the amendment.

MR. LOMAX—I move to lay the amendment on the table. The section is just as it was in the previous Constitution and as it ought to remain.

MR. SANFORD (Montgomery)—I offer this amendment because the rights of the man in a State depend upon his residence. They depend upon his residence in the county, and if it is necessary to say that he shall not forfeit his residence in the State, it should be equally right to say he shall not forfeit it in the county

by a temporary absence. His right to be sued depends upon his residence in the county. Therefore, I say it is just as necessary to say that a temporary absence shall not forfeit his residence in the county as that a temporary absence shall not forfeit his residence in the State. It is his residence in the county that enables him to exercise his political right, and also the burdens of taxation are imposed upon him by reason of such residence. He is taxed in the county where he lives, and he votes in the county where he lives.

MR. LOMAX—I move that the amendment be laid upon the table?

Upon a vote being taken, the motion to table was carried.

MR. LOMAX—I move the adoption of the section as reported.

Upon a vote being taken, the section was adopted.

Section 33 was read as follows:

33. That no form of slavery shall exist in this State; and there shall not be any involuntary servitude, otherwise than for the punishment of crimes, of which the party shall have been duly convicted.

MR. LOMAX—I move the adoption of the Section; it is unchanged.

Upon a vote being taken the Section was adopted.

Section 34 was read as follows:

34. The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or other improper conduct.

MR. LOMAX—The only change, Mr. President, made in that Section is the striking out of the word "right" and inserting the word "privilege"—the privilege of suffrage, instead of the right of suffrage.

MR. HEFLIN (Chambers)—I move the adoption of the Section.

Upon a vote being taken the Section was adopted.

MR. LOMAX—Before the next Section is read in the Committee's report, I desire to call the attention of the Convention to the fact that Section 35 in the Preamble and Declaration of Rights of the Constitution of 1875 is stricken out by the Committee and does not appear.

Section 35 was read as follows:

35. Foreigners who are, or who may hereafter become bona fide residents of this State shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property, as native-born citizens.

MR. SANFORD (Montgomery)—I have an amendment. The amendment was read as follows: Amend Section 35 by inserting in the first line the word "naturalized" before the word "foreigner."

MR. SANFORD—The same reasons apply to that, that were offered in the argument the other day in regard to the suffrage question and to the individuals having declared bona fide, their intentions to become citizens. While we invite emigrants to this State we want them to come as citizens, and not as transitory marauders. The amount of real property that is owned in the United States today is astounding. In Texas, in Mississippi, in West Virginia, in Tennessee, the amount of property is estimated at 27,000,000 of acres, nearly two-thirds of the whole State of Alabama, owned by foreigners, residents of England, Germany and France, and therefore I say that if these people are to own land, let them be citizens so they can bear the burdens of citizenship as well as enjoy the benefits of the rights of such a position. I will mention some of these that own lands in this country. Three millions of acres in Texas, to show you the character of that ownership, are owned by Earl Cardigan, Duke Buford, William Alexander, Louis Stephenson, Douglas Hamilton, Duke of Bowden, Duke of Rutland, and others of that character. So, in Mississippi, Florida, Tennessee and Texas, I say these people reap the benefits from these lands, they should also bear something of the burdens of State. It is said in Texas thousands of tenants pay their rentals to people living abroad, who have never set foot on the American shore. This results in the impoverishment of this country for the benefit of foreign nations and therefore in Alabama let them be naturalized citizens, that shall own property and enjoy the rights of such proprietorship of lands in this State. It is for that I move that the words "naturalized citizen" be placed before the word "foreigner."

MR. BOONE—I move to table the amendment.

Upon a vote being taken the motion to table was carried.

THE PRESIDENT—The question recurs upon the adoption of the Section as reported by the committee.

MR. LOMAX—I move the adoption of the Section.

Upon a vote being taken the Section was adopted.

Section 36 was read as follows:

36. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property, and when the Government assumes other functions, it is usurpation and oppression.

MR. LOMAX — There is no change in that Section, and I move its adoption.

Upon a vote being taken the Section was adopted.

MR. LOMAX—I will ask the indulgence of the Convention and prefer a request, in as much as I have not consumed much of the time of this Convention, certainly no more than I have felt was my duty to consume as Chairman of this Committee. There are but three more Sections to the report of the Committee on Declaration of Rights and if we can finish the consideration of this report this evening it would give me the opportunity to leave here for a few days to answer a very urgent and important call which I have upon me and I ask the indulgence of the Convention to finish the consideration of this report, and I trust it will be granted.

Upon a vote being taken the rules were suspended.

Section 37 was read as follows:

37. That no restraint upon the privileges of suffrage on account of race, color or previous condition of servitude, shall be made by law.

MR. PETTUS—I offer an amendment.

MR. SAMFORD (Pike)—I move to lay that section upon the table.

MR. LOMAX—Don't do that. Do not cut off all debate. I want to state the reasons why this section should remain.

MR. PETTUS I will state to the gentleman from Pike that I have the floor and I have offered an amendment.

MR. SAMFORD—I beg your pardon.

The amendment was read as follows: Amend the report of the Committee on Preamble and Declaration of Rights by striking out Section 37 on Page 10 of the proposed ordinance.

MR. PETTUS—In regard to that I want to say that I do not see why the State of Alabama should perpetuate the Fifteenth Amendment in its Constitutions. Some of us have a hope that some time in the dim and distant future that the light of reason will dawn upon this continent, and that the Fifteenth Amendment will be repealed in the Federal Constitution, and if that be true we do not want our hands shackled by the State Constitution so

that we may not regulate our suffrage in such manner as it may seem best to us. I therefore move to strike out the section and on that I call for the previous question.

The previous question was ordered.

MR. LOMAX—Mr. President, I desire for the Convention to understand the reasons of the committee for leaving that section in the Bill of Rights. As I understand the report of the Committee on Suffrage there is no change or restriction upon suffrage, on account of race, color or previous condition of servitude.

MR. BOONE—I would like to ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield?

MR. LOMAX—Yes, sir.

MR. BOONE—Is not that limitation put upon the State of Alabama by the 15th amendment and has not the Supreme Court of the United States repeatedly held that the amendment because a part of the law of the land including the law of the State?

MR. LOMAX—I will say that this is imposed upon the people of Alabama by the 15th amendment, and that the Constitution of the United States and the amendments thereto are the supreme law of the land and govern Alabama as well as every other State, but what I propose to say is this, there is not a line or a syllable in the majority or minority report of the Committee on Suffrage which undertakes to say, or which pretends to say that there will be any restriction of the privilege of suffrage on account of race, color or previous condition of servitude. Now it is apprehended and in fact, Mr. President, it is threatened, that whatever suffrage amendment this Convention sees fit to adopt, will be carried to the Supreme Court of the United States for review. So far as I have been able to read the report of the majority of the Committee on Suffrage, I believe that provision is constitutional and I do not believe that the Supreme Court of the United States can declare it unconstitutional.

MR. COBB—Do you hold that the declaration of rights is simply an announcement of the great fundamental principles of government in Alabama? Is that true?

MR. LOMAX—I hold that the declaration of rights consists of three things: First, the rights reserved to the people; second, the rights delegates to the Legislature, and third, restrictions upon the power of the Legislature. These are the three consistent elements of a bill of rights.

MR. COBB—One more question, please.

MR. LOMAX—Certainly.



MR. COBB—Do you believe that the people of the State of Alabama believe that the 15th amendment of the Constitution of the United States is a great fundamental political principle?

MR. LOMAX—I do not know that they do.

I want to say that so far as I am concerned, I am rather inclined to think, as Bourke Cochran expresses it, we seldom go by the 15th amendment, but however it may be that amendment stares us in the face as the fundamental law of this land.

What I was going on to say, Mr. President, was this: It is apprehended and threatened, as I say, that the Constitution which we adopt will be carried to the Supreme Court of the United States for review, and that the question of the constitutionality of our suffrage amendment will be passed on directly by that court.

Now it has been declared in some cases, though I do not recall the title now, that in deciding questions of this sort that the court will look at contemporary history, and they will look at the reasons of this Convention, based upon which the constitutional provision was adopted, when the court passes upon these questions; and when the Supreme Court of the United States looks at the debates of this Convention and sees that we have stricken out of the bill of rights the declaration which was in the Constitution of 1868, and in the Constitution of 1875, and has been in the Constitution of Alabama up to this moment, the Supreme Court of the United States will say these men stand before us self-confessed violators of the 15th amendment.

MR. O'NEAL—Is it not a fact that this provision was incorporated into the Constitution of 1868 by force, and by threats of Federal power?

MR. LOMAX—I do not think that the Constitution of 1868 was ever really binding upon the people of Alabama, because it was not adopted by the people.

MR. PETTUS—I desire to ask the gentleman if he does not think a legitimate construction that can be put upon our action in striking out this section, is that we hoped that the Fifteenth Amendment would sometime or other be repealed and that this Convention wants to leave it in the power of the General Assembly at such a time to restrict the suffrage as they think proper?

MR. LOMAX—I do not think the court in passing on the question would come to that conclusion.

MR. COLEMAN (Greene)—If we put it in our Constitution does it not appear as if we approved and endorse the Fifteenth amendment?

MR. LOMAX—Not necessarily.

MR. COLEMAN (Greene) — Would it not be said everywhere that we framed our suffrage law confronted with the Fifteenth Amendment and that we are not only bound by it, but that we adopted it voluntarily, and made it a part of our fundamental law, and we thereby endorse it and accept the reasons for it?

MR. LOMAX—I don't think so. Any reasonable man in the light of contemporary history and in the light of the history of Alabama, could come to no such conclusion about any man who is a true, square out citizen of the State of Alabama.

MR. WALKER—Would the striking out of this provision, as contained in the report, strike out anything from the law at all?

MR. LOMAX—Certainly not.

MR. WALKER—The law will be just the same whether it is in the Constitution or not?

MR. LOMAX—Precisely, but I wanted this Convention to understand the reasons that actuated our Committee. We thought it better to leave these words in here, than subject this Convention to the criticism, that while in your suffrage article you pretend not to make any discrimination on account of race, color, or previous condition, you show by your conduct and action in your bill of rights that you did intend to make a discrimination on account of race, color or previous condition of servitude.

Now I think it is better to leave it in there. So far as the Fifteenth Amendment is concerned I think it is wrong in principle, it was wrong in morals, and I regard it as one of the political crimes of the nineteenth century, but as it is the law, as we cannot get around it, as it may have influence upon the question of upholding our suffrage amendment in the United States Supreme Court, I think it better that we should bear the ills that we have than to fly to others that we know not of.

MR. BOONE—I ask you, in the event that our suffrage article is attacked, and that the case is carried to the Supreme Court of the United States, would not the court pass upon that question as to whether or not it infringed the Constitution of the United States, whether it was incorporated in the Constitution of Alabama or not.

MR. LOMAX—Yes, sir; but has not it been repeatedly held that the court looks to the legislative intention.

MR. CHAPMAN—A point of inquiry. Is there anything before the Convention?

MR. LOMAX—I will state to the gentleman from Sumter that I am before the Convention, but I will be down in a few minutes.

MR. CHAPMAN—But my friend is not a thing. I hope he will not consider himself a thing.

MR. WATTS—Is it not a fact that the State of Alabama in fact did ratify the Fifteenth Amendment?

MR. LOMAX—I think so.

MR. WATTS—Would not this in effect be a ratification of it?

MR. LOMAX—If this would be a ratification of it it was ratified in 1875, because this is the identical language of the Constitution of 1875.

Now gentlemen of the Convention, those are the reasons that actuated your Committee. They believed it was better to leave these words in, and they believed that it would have a better effect to do so, but if it is the deliberate judgment of the Convention that they be stricken out, I want to say to you that the Committee on Preamble and Declaration of Rights will have no tears to shed.

THE PRESIDENT—The question is on the amendment of the gentleman from Limestone.

Upon a vote being taken the amendment was adopted.

MR. WHITE—I think the next in order is to adopt the section as amended.

MR. LOMAX—Yes, Mr. President, I move—no, the section has been stricken out. My parliamentary friend came very near getting me into an error.

Section 38 was read as follows:

38. In the government of this State, except in the instances in this Constitution hereinafter expressly directed or permitted, the Legislative Department shall never exercise the Executive or Judicial powers, or either of them; the Executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

MR. HEFLIN (Chambers)—I move the adoption of the section.

Upon a vote being taken, the section was adopted.

Section 29 was read as follows:

39. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against

any encroachment on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

MR. LOMAX—I move the adoption of that section.

Upon a vote being taken, the section was adopted.

MR. LOMAX—Now, Mr. President, I believe the proper course is to move that the article be engrossed and ordered to a third reading.

MR. HOWZE—I rise to a question of parliamentary inquiry. I do not understand where they get that rule from, that it must be ordered to a third reading and engrossed. It seems to me that this article is ready for its passage now, and when it passes it has to be engrossed under Rule 52, as I understand it. After its passage it has to be engrossed, but not before.

THE PRESIDENT—Rule 47 reads as follows:

Rule 47—When any ordinance is introduced it shall be read at length and be referred by the President without a vote being taken, unless otherwise ordered by a two-thirds vote of the Convention, to the appropriate committee. No ordinance shall be reported back from any committee until after the lapse of one entire legislative day. When any committee shall have reported to this Convention any article or section of the proposed Constitution, said article or section shall again be read at length and three hundred copies thereof printed for the use of delegates; and such article or section shall lie on the table at least one day and until in regular order it shall be taken up for consideration by the Convention.

and rule 52 says: Rule 52—All Articles of the Constitution after their adoption by the Convention, shall be engrossed before their delivery to the Committee on Order, Consistency and Harmony of the Constitution and after the report of said Committee has been adopted by the Convention said Constitution shall be correctly enrolled.

MR. HOWZE—Is not the Article ready to be passed?

THE PRESIDENT—Not until it is read a third time.

MR. HOWZE—The reading just had is the third reading.

THE PRESIDENT—This is the second reading.

MR. LOMAX—Does the gentleman make a point of order?

MR. HOWZE—I rise to a question of parliamentary inquiry. I cannot find any rule for anything of that kind.

MR. LOMAX—I do not desire to detain this Convention. I will move that the Article be ordered to be engrossed and read a third time after engrossment.

MR. O'NEAL—I rise to a parliamentary inquiry. If engrossed and ordered to a third reading, is it open for debate on the third reading?

THE PRESIDENT—It is open for debate but not for amendment.

The question being upon the motion of the gentleman from Montgomery, the same was carried.

MR. LOMAX—I desire to return my thanks to the Convention for the consideration they have shown me in completing the report of the Committee this evening.

Leaves of absence were granted to Mr. Kirkland for tomorrow and Mr. Carmichael of Coffee for today.

Thereupon the Convention adjourned until tomorrow morning.

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## FORTIETH DAY

MONTGOMERY, ALA.,

Tuesday, July 9, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. A. T. Dix as follows:

O, Lord God, King of Kings, and Lord of Lords, who yet careth for the children of men and hath invited them to approach unto Thee, and unto Thee we come this morning for Thou art the source of our lives, and Thou has said if any man lacked wisdom, let him ask of God, who giveth unto all men liberally and upbraideth not. We do indeed lack wisdom in the many problems that come before us in life that we may reach even solution which is satisfactory to ourselves and to our fellow man, and much more that shall be pleasing in Thy sight. We come before Thee this morning confident that Thou wilt hear and that Thou wilt confer Divine guidance, for Thou hast taught us that we may trust in Thy mercy, which is over all Thy work.

We pray Thee to forgive our sins; we pray Thee permit us to have the right view of Him who is our advocate, in whose excellency we may approach Thee, and thus coming, we pray that Thou wilt give unto this body here assembled the blessings which they need; that in considering the interests of the people which

they represent, true humanitarian principles may underlie their action and may the love of man and fear of God dwell in their hearts, and may they be so enabled to enact the fundamental law that the generations to come of the children of men may approve, and Thy divine approbation may rest upon their work. And now, Our Father, do Thou bless the members of this Convention as individuals. Give unto them that experience in Thy grace which is indeed that they may be acceptable to Thee. Bless their families. Bless their communities, and in so doing may Divine benediction rest upon our beloved State. May all of our interest be subserved, according to Thy love and for Thine own glory. We ask for Thy name's sake, Amen.

Upon the call of the roll 116 delegates responded.

Leaves of absence were granted as follows:

Mr. Henderson and Mr. Moody for today. Indefinite leave for Mr. Taylor, on account of sickness.

The roll of delegates was called for the introduction of ordinances, resolutions, etc.

MR. SANFORD—I rise to a question of personal privilege.

THE PRESIDENT—The gentleman will state the question.

MR. SANFORD (Montgomery)—In the remarks that I made on yesterday afternoon in support of the amendment to add the word "naturalized" before the "foreigners," in the official report I am made to say, the amount of real property that is owned in the United States is astounding. I said the amount of property that is owned by foreigners in the United States is astounding.

And it says in Texas, Mississippi, West Virginia and Tennessee the amount of property is estimated at 27,000,000 of acres, and it says nearly two-thirds, when I said it was not more than two-thirds of the area of the State of Alabama. As the report is printed it makes it appear as if I had asserted that two-thirds of Alabama is owned by foreigners. Therefore I ask that the correction be made.

In the closing line it says for this reason I move that the word "naturalized" be placed before the word "foreigner" in the report. In the report it is naturalized citizens that I am asking to be added and the word "citizen" ought to be stricken out.

THE PRESIDENT—The official stenographer will be requested to make this correction.

MR. BROOKS—I rise to a question of personal privilege.

THE PRESIDENT—The gentleman will state the question of personal privilege.

MR. BROOKS—The stenographic report of the proceedings of yesterday in five lines reports me to have stated as much nonsense as would be possible in that space. It says "the conversation to reject merely because they overturn precedent and custom handicaps progress, and if we will apply to well settled precedents and customs and test existing conditions, we may promote development."

As a matter of fact what I did say was this: "The conservatism that rejects changes merely because they overthrow precedents and customs, handicaps progress, but if we will apply to well settled principles and customs the test of existing conditions we may promote development."

In the second to the last paragraph in the column the report reads "but leaving out the question of corporations" when I said "but leaving out the question of corruption."

Report of the Committee on Journal was read, stating that the Journal for the thirty-ninth day of the Convention had been examined and that the same is correct, and the same was adopted.

MR. BEDDOW—Owing to the force of this discussion of the convict question on yesterday, I believe, Mr. Samford of Pike, and myself have concluded to offer an ordinance looking to the improvement of the convict system in the State of Alabama.

The ordinance was read as follows:

Ordinance No. 416, by Mr. Beddow:

A proposition to be entitled an ordinance to prohibit the hiring or leasing of convicts in this State.

Be it ordained by the people of Alabama, in Convention assembled.

That after the first day of January, 1904, the labor of convicts shall not be let out by contract to any person, co-partnership, company or corporation, and the Legislature shall by law provide for the working of convicts for the benefit of the State and the several counties thereof.

Referred to Committee on Legislative Department.

MR. BOONE—I have several petitions that I desire to be read.

Upon motion the petitions were read as follows:

To the Honorable President and Members of the Constitutional Convention, assembled at Montgomery:

Gentlemen—The undersigned residents and citizens of the State of Alabama, and members of the Working Men's Organizations, known as the Mobile Division No. 310, Order Railway Conductors, having read and considered the matter of the memorial and petition of Mobile Typographical Union No. 27, hereto append,

Respectfully show to your honorable body that they favor that prayer of said memorial and petition that said matter be given your consideration and that if consistent your favorable action.

And is it duty bound your petitioners will ever pray.

John J. Dunn,  
President,  
N. K. Ludlow,  
Recording Secretary,  
James H. Kopf,  
Financial Secretary.

Office of Mobile Typographical Union No. 27.

To the Honorable President and Members of the Constitutional Convention of the State of Alabama:

Gentlemen—Your petitions, whose names are appended to this memorial would respectfully show:

That they are each residents in, and citizens of the State of Alabama.

That they favor such change and amendment in the organic law of the State as will remove the menace of a suffrage tainted with ignorance, and open to corrupt practices, which the present Constitution fails to prevent.

That they are members of an organization of artisan workmen, known as the International Typographical Union, the objects of which organization are declared to be "the encouragement of skilled representatives of their membership, the care of their sick and superannuated members, the burial of deceased members; the maintenance of cordial relations between employing and employed printers, and the establishment of a rate of wages with the mutual consent of employers and employes that shall be deemed just and fair by both parties to the wages contract."

That the purposes of the organization as outlined above have been carried out, we would respectfully show to your honorable body that the membership of the International Typographical Union in the United States and Territories, and in Canada and British North America numbers over 50,000; that the publishers of nine-tenths of the newspapers, and more than nine-tenths of



the job printing and book printing offices in these countries employ the labor of this large membership; that the relationships existing between the Typographical Union and said employing printers are most friendly. The American Newspaper Publishers Association which comprises more than 200 of the daily newspapers of the United States and employs more than twenty thousand printers, of whom more than 60 per cent are members of the Typographical Union, and the members of said Typographical Union have this year entered in a convention which provides that in the event of any dispute or disagreement arising between employers and employed where these two parties are concern, such troubles shall be settled without recourse to strike or lockout on the part of either, by mutual agreement or by arbitration;

That the organization provides for its sick, indigent and distressed members in such manner that none become a charge upon the tax payers you represent, in almshouses, poorhouses or public hospitals.

These premises stated your petitioners respectfully pray:

That your Honorable body give such encouragement to productive workers resident in and citizens of Alabama as may be secured by a constitutional limitation that the public printing of the Legislative and Executive Departments of Alabama shall be done only in the State of Alabama.

That the Constitutional Convention now in session give such recognition to organized labor as may be implied by the appearance of the trade mark or the organized printers known as the Union Label, upon the printing needed for your Honorable body.

And as in duty bound, your petitioners pray.

Signed, Dave McBride, and others.

A similar petition was read from the Cigar Makers' International Union of America—Local 219 and 433; from the Marine Engineers Benefit Association No. 84 of Mobile, Ala.; from the Central Trade Council, and from the Working Men's Timber and Cotton Benevolent Association, each petition having a number of names signed thereto.

The petitions were referred to the Committee on Stationery, Printing and Incidental Expenses.

MR. JONES (Montgomery)—On yesterday my colleague, Mr. Lomax, who is now absent was requested to present a memorial of the Montgomery Printers Protective Fraternity. Mr. Lomax is absent today, and I ask leave to have it read and to explain that Mr. Lomax did not have an opportunity to present it on yesterday.

## A MEMORIAL

To the Officers and Members of the Constitutional Convention:

Whereas, a resolution has been introduced in the Constitutional Convention instructing the Committee on Schedule, Printing and Incidental Expenses to have the union label placed on all printed matter of said Convention, which work shall be done by members of a typographical union, therefore be it

Resolved, That Montgomery Printers' Protective Fraternity opposes said resolution and hereby memorializes the Constitutional Convention to reject said resolution on the following grounds:

First—The proposition to limit the right to engage in labor on public jobs to one class of citizens, and thus forbidding other classes from participating in the benefits conferred by the public to the industrial and commercial activity in the State, is infamous and abhorrent to all sense of justice, a prostitution of every idea of government by all and for all, utterly un-American in principle, a most monstrous instance of the practice of monopoly, trust and combine, and only effective in working disaster to honest labor.

Second—Resolutions and labor laws which, when put into effect operate to prohibit all non-union men from securing employment at work performed for the State are illegal, and, when put to the test, must necessarily be declared invalid.

Third—To require that all printing done for the Constitutional Convention shall bear the union label would, in effect, be a boycott on all non-union printing establishments and would place Alabama in the preposterous position of exacting taxes from non-union printers to defray the expenses of a boycott prosecuted against them by the State.

Fourth—Where did the right come from to discriminate in this way between citizens? Can a Presbyterian, a Methodist or a Catholic come here and say that he must have all public favors and the others none? If one class is to be granted special favors, that class should possess special claims. Has union labor any special claim not possessed by non-union labor? Has some particular class of citizens developed great enterprises, monuments of honor, usefulness and helpfulness to themselves and the public at large, and are they asking for a monopoly by ordinance of trade and labor? Is anybody seeking special favors at your hands who contribute to the State something of great value? Is the existence of the State and its prosperity due to the brains, the genius, the enterprise and labors of any now asking that they be given a monopoly by legal enactment?

Fifth—Do members of the Typographical Union pay all the taxes that they should have exclusive rights? They do not. Do they go to war and do all the fighting? No. Their warlike services are after the manner of the Chicago strike, requiring troops and marshals to prevent them from destroying property and interfering with the rights of others. Do they

perform all of the charitable and benevolent work of the State? Certainly not; fraternal orders, made up of all elements of people, look after the distressed and afflicted.

Sixth—In every instance where union label ordinances have reached the Supreme Court, the illegality and injustice of such class legislation has been thoroughly established and the acts declared null and void. The Supreme Court of New Jersey, in the case of *The Paterson Chronicle* against the City of Paterson, February 26, 1901, set aside, as illegal, a resolution of the Common Council of that city instructing the Printing and Stationery Committee to confine all orders for printing and advertising to offices and newspapers employing members of the Typographical Union.

Seventh—The State Printers of Montgomery do not recognize the Typographical Union as an organization, but employ members of the Montgomery Printers' Protective Fraternity, No. 47, and non-union men, and do not use any label.

Eighth—The larger job printing establishments of Birmingham have contracts extending over several years with Birmingham Printers' Protective Fraternity, No. 55, and do not use the union label.

Ninth—These concerns have paid the State for the privilege of transacting business and are entitled to State protection when labor organizations conspire to injure and destroy their business.

Tenth—The Typographical Union does not control a single office in the State capable of doing the State work, and all of the union printers in Montgomery County could not set and print the report of one day's proceedings of the Constitutional Convention in the required time.

Eleventh—All contracts for work for the State should be let to the lowest responsible bidder and no citizen of Alabama should be excluded from participating in a contest for work or enjoying benefits derived from taxation.

Twelfth—The changed industrial condition of the past year or so has been the result of the most serious thought and considerate judgment of a class of men who conceive and extend trade, whose every aim has been to hold up the style of American living; men kindly and patriotically inclined, and not to the vicious persecution of irresponsible bodies called trades councils or industrial assemblies.

W. E. Phillips,  
M. E. Ford,  
F. H. Huston,

State Legislative Committee.

Adopted July 7, 1901.

F. H. Huston,  
President.

C. Baber,  
Secretary.

Referred to Committee on Stationery, Printing and Incidental Expenses.

**THE PRESIDENT**—The next order will be the consideration of the report of the Committee on Local Legislation.

**MR. O'NEAL (Lauderdale)**—The Committee on Local Legislation beg leave to add to their report a section which by inadvertence on the part of the committee was left out. We ask that it be added to the report and be considered in connection with it.

**THE PRESIDENT**—An additional section or amendatory of some section?

**MR. O'NEAL**—An additional section.

The clerk here read the article reported by the Committee on Local Legislation as follows:

An ordinance concerning local legislation.

Be it ordained by the people of Alabama, in Convention assembled, that the following articles on local legislation be inserted in the Constitution:

Article — Local Legislation:

Section 1. The General Assembly shall not pass a special, private or local law in any of the following cases:

- 1st. Granting a divorce.
- 2d. Relieving any minor of the disabilities of non-age.
- 3d. Changing the name of any corporation, association or individual.
- 4th. Providing for the adoption or legitimizing of any child.

**MR. OATES**—I have not written an amendment, but I suggest changing a word instead of "legitimizing" use the word legitimate. I have looked in the World's dictionary, which is the latest, and legitimizing is not to be found there.

**MR. WATTS**—It is correct; we took care to get it right, and got it out of the dictionary.

**MR. OATES**—I have not seen it.

**THE PRESIDENT**—The gentleman from Montgomery will suspend until the secretary reads the entire section.

The reading was continued.

- 5th. Incorporating a town, city or village.
- 6th. Granting a charter to any corporation, association or individual.
- 7th. Establishing rules of descent or distribution.

8th. Regulating the time within which a civil or criminal action may be begun.

9th. Exempting any person, corporation, county, township, municipality or association from the operation of any general law.

10th. Providing for the sale of the property of any individual or estate.

11th. Changing or locating a county seat.

12th. Providing for a change of venue in any case.

13th. Regulating the rate of interest.

14th. Granting any exclusive or special privilege, immunity or franchise whatever.

15th. Fixing the punishment of crime or misdemeanors.

16th. Providing for or regulating either the assessment or collection of taxes.

17th. Giving effect to invalid will, death or other instrument.

18th. Legalizing the invalid act of any officer.

19th. Authorizing any township, city, town or village to issue bonds or other securities.

20th. Amending, confirming or extending the charter of any corporation or remitting the forfeiture thereof.

21st. Creating, extending or impairing any lien.

22d. Chartering or licensing any ferry, road or bridge.

23d. Regulating the jurisdiction and fees of justices of the peace or the fees of constables.

24th. Establishing separate school districts.

25th. Establishing separate stock districts.

26th. Creating, increasing or decreasing fees, percentage or allowances of public officers. No special, private or local law, except a law fixing the time of holding courts, shall be enacted in any case, which is provided for by a general law, or when the relief sought can be given by any court of this State, and the courts and not the General Assembly shall judge as to whether the matter of said law is provided for by a general law and as to whether the relief sought can be given by any court; nor shall the General Assembly indirectly enact any such special, private or local law by the partial repeal of a general law. The General Assembly shall pass general laws for the cases enumerated in this section.

Sec. 2.—No special, private or local law shall be passed on any subject not enumerated in Section 1 of this article, except in reference to fixing the time of holding courts, unless notice of the intention to apply therefor

shall have been published, without cost to the State, in the county or counties where the matter or thing to be effected may be situated, which notice shall state the substance of the proposed law, and be published at least once a week, for four consecutive weeks in some newspaper, or if there is no newspaper published in the county, by posting the said notice for four consecutive weeks at five different public places in the county or counties prior to the introduction to the bill; and the evidence that said notice has been given shall be exhibited to each house of the General Assembly, and the fact of said notice spread upon the Journal. The courts shall pronounce void every local law which the Journals do not affirmatively show was passed in accordance with the provisions of this Section.

Sec. 3. The General Assembly may repeal any special, private or local law upon notice being given and shown as provided in the last preceding section.

Sec. 4. The operation of no general law shall be suspended for the benefit of any individual, corporation, association, town, city, county or township nor shall any individual, corporation, association, town, city, county or township be exempted from the operation of any general law.

Sec. 5. The general Assembly may by general law confer upon Courts of County Commissioners, Boards of Revenue or other courts, such power of local legislation and administration, touching all matters and things not provided for by general law, and not inconsistent with the provisions of this Constitution as the General Assembly may from time to time deem expedient.

Sec. 6. A general law within the meaning of this Article is a law which applies to the whole State; a local law is a law which applies to any political sub-division or sub-divisions of the State less than the whole—a special or private law within the meaning of this Article which applies to an individual, association or corporation.

MR. MACDONALD—I desire to offer an amendment.

MR. O'NEAL—I raise the point of order, an amendment is not now in order until the whole report is read, and the supplement report is to be considered with this.

THE PRESIDENT—The rule requires it to be considered section by section.

MR. O'NEAL—I understand, but it is to be considered at the same time.

THE PRESIDENT—Does it relate to Section 1?

THE PRESIDENT—Do you desire the supplemental report read, or included in the report of the Committee.

MR. O'NEAL—We do not care to have it read particularly. It will have to be considered in connection with this report, it was agreed at the time that the report of the Committee on Local Legislation should be considered at the same time. I suggest that they read that.

MR. CHAPMAN — I suggest that it is necessarily follows here, the regular report ends at Section 26, and the report of the Legislative Department begins at Section 27 following on.

The Clerk here read the supplemental report from the Committee on Legislative Department as follows:

27. Exemption of property from taxation or from levy or sale.

28. Exempting any person from jury, road, or other civil duty.

29. Laying out, opening, altering, or working roads or highways.

30. Providing for the management or support of any common or private school, incorporating the same or granting such school any privileges.

31. Granting any land owned by or under control of the State to any person or corporation.

32. Remitting fines, penalties or forfeitures.

33. Providing for the conduct of elections, or designating places of voting, or changing the boundaries of wards, precincts, or districts, except on the organization of new counties.

34. Restoring the right to vote to persons convicted of infamous crimes or involving moral turpitude.

Refunding money legally paid into the State Treasury.

Your committee do not concur in Section 5 of said article as reported by the Committee on Local Legislation, and recommends as a substitute therefor Section 25 of Article IV of the present Constitution.

MR. O'NEAL—On behalf of the Committee on Local Legislation we accept that as a part of our report except so far as it may already be covered by the report of the Committee on Local Legislation, except the last clause commencing with line fifteen which the committee does not consent to.

MR. WILLIAMS (Marengo)—Will the gentleman allow an interruption? Several of us have been trying to find out where we are at. We do not understand the two reports and ask that you explain the situation.

MR. O'NEAL (Lauderdale) — Mr. President — An eminent authority has stated that three periods may be distinguished in the development of State Governments as set forth in their constitutions, each period marked by an increase in the length and minuteness of those instruments. The first period includes the constitutions of the original thirteen States as well as Kentucky,

Vermont, Tennessee and Ohio. Most of these early constitutions gave expression to the impressions of the Revolutionary War. They manifested a dread of executive and military power, together with a disposition to leave everything to the legislative authority, which more directly represented the people. Hence most of these early constitutions contained but little except an elaborate bill of rights, a simple outline of a frame of government, with a few executive officers and courts of justice. The second period as shown by the same authority covers the first half of the nineteenth century, down to the time when the agitation over slavery arrested the natural processes of State development. This period was characterized by the fact that the absolute powers of the Legislature began to be questioned, and a tendency to regard them as mere agents of the people exercising delegated powers, and whose powers could only be increased by resort to the sovereign, the people, by constitutional amendments. The third period began about the date of the Civil War, and was marked by a tendency to strengthen the Executive and Judicial Departments. The most marked and noticeable change during this period, however, was the tendency to narrow the power and competence of the Legislature, and to fetter its action by absolute prohibition. The English theory of government that a community must act through a ruling legislature had been adopted by the States after the revolution. This conception of government had prevailed till about the period of the Civil War, at which time it began to be abandoned by the States in framing new charters of government. It was not a step towards a pure democracy as might at first appear. The withdrawal of power from the Legislature, gave it back to the people, but as the people could only act in direct legislation after long delay and by complicated methods, such provisions limiting the competency of the Legislature are really conservative in their tendency, and is really a check imposed by the people on themselves. This brief review of the three periods of the growth and development of State constitutions, is necessary to show that the modern tendency to limit and narrow the powers of the Legislative Department of the government is the result of evolution, the slow, gradual outgrowth of actual experience, by all the States, in the administration of State Governments. The demand in this State for additional and more stringent limitations upon the power and competence of the legislature has gradually grown from actual knowledge that the remedies heretofore adopted have proved unavailing. There is no reform in the constitution we are now framing more important than a check upon the evils of local and special legislation. In every public utterance upon the stump, the advocates of a Constitutional Convention pledged the people of Alabama, that next in importance to a reform of our suffrage, the purity of the ballot and the removal of the causes which had forced our people to resort to questionable methods to maintain good government, was the pressing



need of legislative reform. The growing evils of special, private or local legislation had long been recognized in Alabama. The framers of the Constitution of 1875 had undertaken to check and as they supposed had prevented this class of legislation. They had provided that the General Assembly should pass no local or special law on a subject which could be provided for by a general law, but the decision of our Supreme Court that the question of whether a local or special law could be provided for by a general law was purely the subject of legislative discretion rendered their efforts in this direction fruitless. Since that time States which have framed new constitutions have sought to overcome this danger by enumerating specifically certain subjects as to which the legislature was absolutely prohibited from passing local, special or private laws. This method was adopted because experience had demonstrated that the usual requirements that the legislature should pass no local, or private laws on subjects which could be provided for by a general law, had utterly failed to arrest the flood of local laws which with ever increasing volume had been pouring from every legislative body. Hence we find that the latest and best considered constitutions contain long lists of enumerated cases as to which the legislature is expressly prohibited from passing local, special or private laws. The fullness and minuteness with which in many constitutions this long and ever increasing catalogue of local or special laws is presented, demonstrates that the mischiefs and evils arising from improvident and corrupt legislation of this class had grown alarming. That these constitutional prohibitions lessen or check the evil is shown by the States where this method has been adopted.

Illinois for instance soon after the adoption of her constitution, reduced her sessional statutes to about three hundred pages, Iowa to about 200 pages, whereas Wisconsin statutes for 1885 reached two thousand pages there being in that State very little restriction on legislative action. In Alabama there has been a gradual but rapid increase in the number of local or special laws. The size of the volume has been increasing annually until the last local acts were so voluminous they were unwieldy and could not be incorporated in one volume.

Mr. President, the question may be asked what is the cause of this widespread opposition to this class of legislation. Local, special or private bills are condemned because they destroy the harmony of the law, consume the time of the legislature, obscure in the eyes of members of the General Assembly the importance of general laws, furnish opportunity for perpetrating jobs, inflict injustice on individuals or localities in the interest of a favored few. It has been truly declared that they are one of the scandals of the country. They have been in the past and will continue to be in the future the prolific sources of corruption. Such bills are most frequently presented and promoted by corporations or individuals

proposing to form corporations in order to secure some valuable franchise, privilege or other pecuniary advantage which cannot be obtained under general laws. To procure the passage of such laws all the methods of intrigue, lobbying, and log rolling are used and some time lavish expenditures of money. The history of legislative bodies shows that in the great States of the Union the promoters and authors of such bills have not hesitated to buy those who could be bought, or win support for their schemes by methods however questionable. The bribery and flagrant corruption which has disgraced the Legislature of some of the States of the Union can all be traced to the effort to secure the passage of local or private bills, conferring some special or valuable privilege, franchise or pecuniary advantage on the promoters or syndicate interested in the proposed legislation. In States like New York, Illinois and Pennsylvania, and some of the new Western States, offering promising fields for pecuniary investment, the possibility of making money out of a seat in the Legislature, has furnished the opportunity to reap golden harvests for a certain class who regard money as of more value than character or self-respect. It is to the credit of our institutions that only a few of the great States of the Union has this open and shameless bribery been attempted. So far the money power has directed its attacks against the Legislatures of only a few of our States, and while our State has so far been exempted from such scandals and the personnel of our Legislature has been pure and above reproach, the effect of such legislation has been felt in other ways. It has created a spirit of localism and has obscured in the eyes of the members of the Legislature the importance of general laws. A member of the Legislature is no longer under the system which these local laws have established, a representative of the State. He is the member from Buzzard's Roost, or Limekiln, and his whole time and talents are directed towards securing the passage of some local legislation which will increase his local influence, secure an appropriation for some local institution, or the obtaining of some special privilege or franchise for some local corporation or individual. The higher and more important functions of general legislation are completely overlooked. The pressing demands of reforms in the administration of justice, the proper enforcement of the laws or the revenue system of the State are ignored, and to our States may be applied the famous dictum "too many laws corrupt a republic." The spirit of localism is all pervading and all controlling. It dominates our Legislature and has established customs and usages as inexorable as the laws of the Medes and Persians, by which the local member is clothed with absolute and undisputed power to control all legislation affecting his locality or county. Under this tyrannical rule or custom every member feels bound to sustain and support any local bill the member from the county to which the local law applies, may introduce. The experience of every one who has essayed the hope-

less task of opposing the passage of a local law which has the support of the local member confirms this statement.

It matters not how vicious such a bill may be, how much the members may oppose the principles it may declare, or how shamefully it may violate individual rights, or the interests of the State, if it has the support of the local members its passage is generally secure. It is vain to point out to other members that such a bill is unwise, that it has the bitter opposition of the people of the locality affected or that it tramples under foot every principle of local self government, imposes burdens on the citizens and vests in individuals or corporations valuable franchises or privileges, which could not be obtained under general laws, you will be met with the response that while they sympathize with your views and oppose the principles on which the bill is based, that the courtesy and usage of the House or Senate leave them no alternative but to support any measure which has the endorsement and sanction of the local member. You may appear before the committee to which the bill is referred, you may oppose its passage with arguments which are unanswerable, you may present the testimony of leading citizens in the community to which the local law applies, and when you have finished the Committee will blandly ask the local member what his wishes are in the matter, and you will be told that however much the committee may appreciate your argument and feel convinced of the justice of your position, that they are compelled to heed and obey the views of the immediate representative of the people. The inevitable result is that the uniformity and harmony of the law is destroyed, and the community that may be outraged and wronged by such legislation has no redress but to await in patience the next election and retire the member to the shades of private life. If any member, recognizing the danger and mischief which follows the observance of such a courtesy or custom, refuses to give his approval, he will soon find himself without influence, unable to secure the passage of any local bill, however meritorious or unobjectionable. It follows, therefore, that local special or private legislation, embodies not the concurrent wisdom and approval of a majority of the Legislature, but is simply the expression of the desire of the local representative, who, by this courtesy, is made the sole and absolute arbiter of all legislation which may affect his particular locality. Nor do such bills ever receive the same careful scrutiny and examination by the Executive or Legislature which is given laws of a general character. It has been argued in opposition to this limitation of the power of the Legislature to pass local laws that if they are deprived of this prolific source of legislation that they will give too much attention to general laws and upset too many statutes of a general nature or pass too many general laws. Such has not been the experience of States where local legislation has been prohibited. Subjects of a general nature will provoke more debate, will be

considered with more care, will be examined with more critical scrutiny and with the result that only general laws of a pressing character, and the necessity of which is apparent, will be enacted. The British Parliament which legislates for a nation whose empire is so extensive that it girdles the globe passes only a few hundred laws. The general laws passed by Congress are comparatively few in number and hence this fear is not warranted by the history and experience of legislative bodies. Another result will be that it will elevate the tone and character of the Legislature. Men who are now unwilling to spend weeks securing the passage of some local law, the granting of some franchise to some corporation, will more readily consent to seek a seat in a body engaged in general legislation.

Each member will feel that he is the representative of the people of Alabama, engaged in legislating for the State and reforming its laws, and increasing the efficiency of the administration. The blighting spirit of localism which has so long degraded the tone of our Legislature will be overcome, and our respect and confidence in the law-making body of the State will be increased. If there be danger of reckless or extravagant appropriation of the public money this can easily be obviated by incorporating in our fundamental law provisions now found in nearly all the recent State Constitutions by which a majority of the members elected to the General Assembly are required to pass any bill carrying an appropriation of public money.

Another one of the chief evils of local legislation is to be found in the constant intermeddling with the government of our municipalities. Thoughtful students of our system of government have declared that in the government of our cities and towns is to be found the weakest features of American institutions. This is largely due to the fact that the average citizen is too much engrossed in his private affairs to give much attention to the misgovernment, corruption or reckless extravagance that may exist in municipal government. It is only when corruption becomes so unblushing or an aroused public sentiment is created by flagrant abuse of power, or danger of bankruptcy that the forces of reform are awakened and organized. All authorities on this subject, however, agree that the inefficiency of municipal government is chiefly due to the constant intermeddling and tampering with local affairs by the legislature. The local laws of the last session of our General Assembly show that a majority of the local bills passed were in reference to municipal corporations.

A distinguished statesman of the old world speaking on this subject said "one form of this special legislation is peculiarly attractive and pernicious. It is the power of dealing by statute with the municipal constitutions and actual management of cities. Cities grow so fast that all undertakings connected with them are

peculiarly tempting to speculators. City revenues are so large as to offer rich plunder to those who can seize the control of them. The vote which a city casts is so heavy as to throw great power into the hands of those who control it, and enable them to drive a good bargain with the wirepullers of a legislative chamber. Hence, the control exercised by the legislature over city government is a most important branch of legislative business, a means of power to scheming politicians, of enrichment to greedy ones, and if not of praise to evil doers, yet certainly of terror to them that do well."

No city can be well governed whose affairs are directed by the legislature. The local member of the legislature has not the time or the requisite knowledge of details to direct the affairs of municipalities. Such intervention involves a disregard of one of the fundamental principles of government, the right of local self-government. No two cities in the State have the same laws. Although vast interests may be involved no one but a skilled lawyer can wade through the numerous statutes and charters applying to each town or city in the State or keep advised of the numerous changes in municipal laws. The uncertainties arising from such multiplied and conflicting legislation lead, as has been truthfully stated by an eminent judge, to incessant litigation with all its expensive burdens, public and private.

The Commissioners appointed by the State of New York in 1876 speak thus truthfully about this evil. They say: "It may be true that the first attempts to secure legislative intervention in the local affairs of our principal cities were made by good citizens in the supposed interest of reform and good government, and to counteract the schemes of corrupt officials. The notion that legislative control was the remedy was a serious mistake. The corrupt cliques and rings thus sought to be baffled were quick to perceive that in the business of procuring special laws concerning local affairs they could easily outmatch the fitful and clumsy labors of disinterested citizens. The transfer of the control of the localities to the State Capitol had no other effect than to cause the transfer of the methods and arts of corruption, and to make the fortunes of our principal cities the traffic of the lobbies.

"Municipal corruption, previously confined to within territorial limits, thenceforth escaped every bound and spread to all parts of the State. Cities were compelled by legislation to buy lands for parks, and places because the owners wished to sell them, compelled to grade, pave and sewer streets without inhabitants, and for no other purpose than to award corrupt contracts for the work. Cities were compelled to purchase at the public expense and at extravagant prices, the property necessary for streets and avenues, useless for other purposes than to make a market for the adjoining property thus improved. Laws were enacted abolishing one office and creating another with the same duties in order to

transfer official emoluments from one man to another, and laws to change the functions of officers with a view only to a new distribution of patronage, and to lengthen the terms of office for no other purpose than to retain in place officers who could not otherwise be elected or appointed."

The picture so elaborately drawn of the dangers of this class of local legislation has fortunately not been realized in this State. We cannot, however, doubt that with the growth and development of municipal corporations in this State, the same evils in the future will arise unless we now remove the cause of this danger to honest government. Although the corruption portrayed has not yet developed in Alabama, we can not fail to recognize the fact that this constant tinkering by the legislature with municipal affairs, and local self-government, has already increased to an alarming extent in this State and has become a serious evil. The Committee has given this subject special attention and are led to believe that the adoption of their report will remove the danger of evils from this class of legislation in Alabama. They have sought to prevent the legislation from interfering with municipal governments or the conduct of municipal affairs.

Mr. President, your Committee recognized that one of the most frequent modes in which the legislature adopted special laws was by amending a general law by excepting from its operation certain counties and cities in this State. Another plan was to pass what purported to be a general law but which was in fact a special law. This we have expressly prohibited.

Mr. President, the danger in private or special bills became so manifest in England over fifty years ago as to lead to the adoption of a quasi judicial board for their consideration. Such bills are brought into the British Parliament by petition and three months' notice by advertisement must be given before a Parliament meets and a copy of the bill must be filed some weeks before the opening of the session. After the second reading instead of being considered in the committee of the whole, the bill is referred to a special committee of four who exercise a kind of judicial function. They take evidence in regard to the bill from promoters and opponents, hear argument of counsel and make their report. It would be regarded as improper to attempt to influence the decision of this Committee as it would with us to influence the decision of our Supreme Court. With us, however, such bills are treated as public bills. They are referred to the appropriate committee and if supported by the local member are generally reported favorably and passed without question. In England instead of the lobby there is a trained body of men who represent parties promoting such bills, known as Parliamentary agents. These agents are controlled by a code of ethics as binding as the code of ethics that govern attorneys at law. No improper or questionable methods to secure

the passage of local or private bills is tolerated. Mr. President, the forces of evil have grown too strong to yield without a struggle. The experience of States which have attempted to lessen the mischief of local or special legislation, show that even the most stringent provisions do not prevent evasions. We can not hope that our efforts will prove completely successful in removing from our legislation this danger, but we do believe that we have profited by the experience of our own and other States and that by the provisions of the article we have reported, local or special legislation will be largely eliminated and its evil minimized.

We all realize the truth of Mr. Jefferson's declaration that too much legislation is one of the greatest dangers of a Republic. The growth of the paternal idea of government in recent years has become alarming. Men who desire reform for some fancied ill of society immediately seek a legislative enactment and the result is that the statute books are teeming with penal laws or restrictive legislation on almost every conceivable subject. Individual enterprise and the pride of personal freedom are sacrificed and the citizen is being taught that he must not look to the press, public sentiment or education and the precepts of religion and morality for relief from the evils of social life, but to the Legislature. We forget that that community is best governed which is least governed; that personal freedom is being destroyed and the citizen hedged in with innumerable statutes, relief from which he only secures by their non-enforcement.

Sumptuary laws, that vex and oppress are being poured out by every session of the Legislature in a confusing mass and today we are the most governed people in the world. We submit to restraints on our personal freedom which in almost any other civilized country would provoke revolution.

MR. CARMICHAEL (Colbert)—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman will state his parliamentary inquiry.

MR. CARMICHAEL—I would like to inquire how long the gentleman has been speaking.

THE PRESIDENT—The gentleman's time has almost expired.

MR. O'NEAL (Lauderdale)—Mr. President, by prohibiting local legislation we do not seek to impair the power and usefulness of the Legislature. Under our system it will continue to be one of the great departments of government and we are only endeavoring to elevate its tone and enlarge its field of usefulness. We would have it to be as it was intended, a body engaged in legislation for the State, and not an assembly whose time was devoted

almost exclusively to petty matters of purely local concern. Stop the great and alarming evils of local legislation and you will have taken a most commendable step towards removing popular prejudice against the Legislature, elevating the character of its membership, widening its field of usefulness, and making this great department what it was in the earlier and better days of the republic—a body composed of the most distinguished men of the State, no longer living in the breath of public opinion, swayed by every dominant impulse or passion among the people, swift to fulfill popular behests almost before they are uttered, engaged in extravagant expenditures of public money, or struggling to secure some franchise or advantage to some individual or corporation, but a deliberate assembly, conservative in its character, engaged in the serious concerns of State and seeking to reform unwise laws and to promote the prosperity of all the people.

MR. OATES—Mr. President, since the very able and elaborate discussion of this subject by the learned delegate from Lauderdale, I do not propose to consume but little time of the Convention upon it. The Convention of 1875 knew, as the country did, that prior thereto, the evils of local legislation had developed so that they called the attention of the country to it, and the question of that Convention was how to properly limit and restrict it. I had the honor, Sir, to offer a proposition which is shown on the journal, embracing, as I recollect, seventeen classes of cases in which no local bills should be passed, and that everything named might be provided for under general laws. It occurred to me that that was the only way to properly limit and restrict this growing evil, but in the Convention it was thought that that was rather too radical. I recollect well the remarks of my old friend, Mr. Lyon the delegate from Marengo. He stated that that would curtail local legislation greatly, but he thought it would be too radical. He offered a proposition which was adopted and incorporated in the present Constitution requiring that wherever any one desired the passage of a local bill that he should prior thereto, advertise its purpose and the kind of bill, the object of it, in a newspaper published in the county where the bill would operate when passed. I did not believe then that that would remedy the evil, and it so proved. The first case that was carried to the Supreme Court to test the constitutionality of it for a non-compliance with its requirements, the Supreme Court very properly decided that it presumed everything to have been done which the Constitution required to have been done. There was no requirement that this advertisement should be affirmatively shown upon the record, and the court presumed it was else the Legislature would not have passed the act. That opened the doors to the flood of local legislation which we have since seen, and it is a growing evil. Every Legislature that convenes passes a greater number. Now the members are not to blame for it. Their constituents apply to them to have those



measures passed, and their representative is anxious, of course, to represent his people in a manner acceptable to them. It has grown to such an extent that it consumes the whole time allowed by the Constitution for the Legislature to do its work, and the general laws are neglected, woefully neglected, and a proper amount of attention not given to them at all. Now, sir, take the Legislature before the last, and I took the pains to count up and see what that had been. The general laws are contained in a little volume about the size of Webster's Spelling Book, and it contained including the appropriation acts, forty-eight so-called general laws, the volume of local acts contained 949. Then to see something of the evils of it, I inquired of the Secretary of State about the cost to the State of the passage of many of these acts. You take, for instance, the acts chartering towns and villages, which might well have been done before the Probate Court at the expense of a dollar, but he informs me as to several and the expense of passing them was from \$50 to \$150 for the clerical work, printing, etc. Now when you count up the whole amount of it, it is a large expense, and is wholly unnecessary and improperly saddled upon the general tax payers of the State. To say nothing of the other evils that result from it, these are enough to call upon this Convention to abate that evil. It cannot be done, as experience has shown in other States and in our own, by declaring that no local act shall be passed which can be provided for by general law. That is not obeyed. Then the committee over which I had the honor to preside, the Legislative Department, have had several ordinances referred to it on this subject, and went to work and prepared a schedule of the cases in which the committee did not believe any local laws should be passed. Then it transpired that the importance of this thing had grown to much upon the country that the President of the Convention thought it best, and with the advice of his Committee on Rules, had a special committee, a separate committee, to deal with this question. Then it was that on conference with the Chairman of the Committee on Local Legislation, all of the work of the committee upon general legislation to which this class of work had belonged theretofore, was turned over to that committee, but as they did not adopt all of the recommendations of the Committee on Legislative Department, the supplemental report which you have proposing several additions was made by that committee. That is the reason there are two reports here. I have heard some delegates say that they would like to have some explanations of it. That is the best explanation I can give. There is no conflict between the committees as I understand it at all, all desiring the same object, the same purpose—to restrict the Legislature from passing local laws on a good many subjects, and the only question, it seems to me for this body to consider is whether we have gone too far or not far enough, and as to each one of these paragraphs to consider whether it is proper to restrict them, to prevent the Legislature from passing any local law upon that subject. I pre-

sume there will be not much difference of opinion. There may be some difference a little later on as to some of the provisions herein, but in the general discussion, I will consume no more of your time, feeling that these were points which my friend, the Chairman of the Committee on Local Legislation, had not touched upon particularly, but had given a most excellent and full explanation of the general purposes.

Mr. Foster here took the chair.

MR. WILLIAMS (Marengo)—I ask unanimous consent to introduce a resolution.

MR. O'NEAL (Lauderdale)—Will the gentleman yield to me for a suggestion?

MR. WILLIAMS—Certainly.

MR. O'NEAL—The first section embraces all the catalogue of subjects as to which the Legislature is prohibited from passing local laws. I believe it will expedite matters to take up each one of the subjects such as granting divorces, etc., take up each one in the order in which they appear. The rule is we take up each section and consider each article section by section. If that rule was enforced we would have to consider the whole catalogue of subjects in this one section. I ask unanimous consent that it be taken up that way.

MR. OATES—I presume that he means to read each one of the paragraphs and pass them one by one.

THE PRESIDENT PRO TEM. (Mr. Foster.)—The gentleman asks unanimous consent that the first sub-division be taken up.

MR. O'NEAL—I ask the passage of the first sub-division granting divorces.

MR. WILLIAMS (Marengo)—I have a short resolution that I wish to introduce.

To which objection was made.

MR. OATES—I want to make a suggestion to the chairman of the committee with reference to the mode of procedure. I do not desire to interfere with the resolution proposed to be offered by the gentleman from Marengo, but I will suggest that you can go on with the reading of this section, slowly reading each sub-division and if no objection is raised, it will be considered as passed, and that will save time, rather than taking a vote on each sub-division.

MR. O'NEAL (Lauderdale)—I accept the suggestion of the gentleman and it will probably save time.

MR. HEFLIN (Chambers)—I hope the objection will be withdrawn to the resolution offered by the gentleman from Marengo. The purpose of the resolution is to extend the privileges of the floor to Mr. Bernard Harwood.

MR. WILLIAMS (Marengo)—I have a short resolution to introduce, and I ask for a suspension of the rules.

The resolution was read as follows:

Resolution No. 232, by Mr. Williams, Marengo.

Whereas, this Convention is in session by virtue of an act of the last General Assembly commonly called and known as "The Harwood Bill," so-called from the name of the author of the bill, the Hon. Bernard Harwood, the distinguished member of said Assembly from the county of Greene, and whereas, this member of the Assembly is at present in Montgomery.

Now be it resolved, that the privilege of the floor of this Convention be and is extended to the Hon. Bernard Harwood of Greene.

A vote being taken the rules were suspended and a further vote being taken the resolution was put upon its immediate passage.

MR. O'NEAL—I now suggest that we proceed with the consideration of this section.

MR. WEATHERLY—Before that is done, I would like to rise to a question of personal privilege. Following the suggestion of the gentleman from Walker, I have taken occasion to read my speech that I made yesterday. I find that the reporter has made one error that I cannot allow to go overlooked. He has me stating that "jury trials protect those who are unpopular in the community, who would otherwise be oppressed under the laws of God." I don't want to be put in the attitude of going down in history as making that charge (and I say it with all reverence) against the Lord God Almighty; because I believe we are always under His protection and loving care. What I said was: "Who are unpopular in the community and who would be oppressed otherwise; but under the Providence of God there is always one man, at least, can be found who will stand up for the right. I would like for that correction to be made.

THE PRESIDENT PRO TEM.—The stenographer will make the correction, under the rule.

MR. HOWELL (Cleburne)—Before we proceed further with the consideration of this question of local legislation, I would like to ask the Chairman of the Committee on that subject a question, being a legal gentleman. This State is all covered with local acts

from the mountains to the Gulf. In case this Article is adopted and goes into the Constitution and the Constitution is ratified, will the Legislature be authorized to repeal local acts now in force, many of which are vicious?

MR. O'NEAL—The Section expressly provides for that.

The Clerk then proceeded to read the Ordinance Concerning Local Legislation by sections, as follows:

### AN ORDINANCE

#### Concerning Local Legislation.

Be it ordained by the people of Alabama in Convention assembled, That the following article on Local Legislation be inserted in the Constitution:

#### Article —.

##### • Local Legislation.

Section 1. The General Assembly shall not pass a special, private or local law in any of the following cases:

First—Granting a divorce.

Second—Relieving any minor of the disabilities of non-age;

Third—Changing the name of any corporation, association or individual;

Fourth—Providing for the adoption or legitimizing of any child;

Fifth—Incorporating a town, city or village;

Sixth—Granting a charter to any corporation, association or individual.

Seventh—Establishing rules of descent or distribution.

MR. ASHCRAFT—I do not understand just how we are proceeding. I thought the entire Section was just now read, and that we were to pass upon this Section paragraph by paragraph.

THE PRESIDENT PRO TEM—The rule requires that the whole Section be passed upon. This Section is divided into subdivisions. The rule adopted by unanimous consent a few minutes ago was that each subdivision was to be read slowly and unless objection was made, or amendment offered, to proceed with the reading until the end of the Section was reached. Then the question would be upon the adoption of the Section as a whole.

MR. ASHCRAFT—When the reading is concluded, amendments will not be in order then?

THE PRESIDENT PRO TEM—I think not.

MR. O'NEAL—I rise to make an inquiry: Amendments would be in order to add to the Section, but not change what has been passed?

THE PRESIDENT PRO TEM—The Chair would hold that an amendment to the entire Section would be in order.

MR. ASHCRAFT—I did not so understand. I desire to offer an amendment to the Fourth Section by striking out the word legitimizing and inserting in lieu thereof the word legitimation.

The clerk then read the amendment offered by Mr. Ashcraft as follows:

Amend subdivision 4 of Section 1 by striking out "legitimizing" and inserting in lieu thereof "legitimation."

THE PRESIDENT—The question is on the adoption of the amendment offered by the gentleman from Lauderdale.

MR. ASHCRAFT—By an examination of the derivation of these words, it will be seen that "legitimizing" really has no etymological history. "Legitimation" is the word which has been sanctioned by legal usage, as will be shown by reference to the dictionary. We have a word here which has been given a meaning by custom rather than by good usage.

MR. JONES—Will the gentleman permit an interruption? Can't the Committee on Harmonics settle this discord between our two distinguished friends without taking up so much time of the Convention?

MR. ASHCRAFT—I don't think the words "adoption or legitimizing" in the Article should be associated as they are. It is a rare usage of the word, and the fact that it is not good grammar, are both reasons why I think the Committee ought to accept the amendment.

MR. WATTS—The objection of the gentleman from Lauderdale to the language used is simply hypercritical. The dictionary which I produced here a few moments ago says that legitimizing is correct. It is not the only one but it is so stated in Worcester and it is also stated in Webster; and this Committee put these words in there advisedly; I don't see any necessity of taking up the time of this Convention by simply substituting another word which means identically the same thing, and I move to lay the amendment on the table.

And upon a vote being taken the motion was carried.

The Clerk then read Subdivision 8 as follows:

Eighth—Regulating the time within which a civil or criminal action may be begun.

MR. JENKINS—I wish to offer an amendment.

The amendment was read by the Clerk as follows:

“To amend by striking out Subdivision 8.”

MR. JENKINS—The reason I offer that amendment is there are a great many courts of law and equity in this State and the practice and procedure in a great many of those courts is not the same as in other courts and there might be desired changes to be made that would not suit all the courts in this State. They might want to change the City Court, the County Court or the Circuit Court. We do not know what the Judiciary Court will report as to that.

MR. O’NEAL—This is merely a statute of limitations. I think the gentleman misunderstands this Section, to regulate the time in which civil and criminal actions may be begun. You can not pass any limitation for any county different from the limitations which apply to the whole State. It has no reference to the regular procedure in court. It is the exact language in which you find in the Code, regulating the time in which action may be begun.

By unanimous consent the amendment offered by Mr. Jenkins to Section 8 was withdrawn.

Ninth.—Exempting any person, corporation, county, township, municipality or association from the operation of any general law.

MR. CUNNINGHAM—I desire to offer an amendment to that subdivision.

The Clerk then read the amendment as follows:

Amend Subdivision 9, Section 1, Article on Local Legislation. Add at the end of said subdivision the following words: “Provided, that this section shall not apply to the regulation of the same as spirituous, vinous or malt liquors.

MR. CUNNINGHAM—It appears to me that prohibits the regulation of the sale of spirituous, vinous, and malt liquors, by high license, dispensary, prohibition or otherwise. The general law of the State provides how whiskey, spiritous, vinous and malt liquors can be sold. If a community asked for the establishment of a dispensary, under the provision of this subdivision, it cannot be granted. If they ask for the high license. Now, I do not want to oppose leaving this matter with the communities by popular vote, in the event they want to pass upon this great question; and I am unwilling to allow the adoption of that provision without my humble protest, in the Constitution we are now framing, that will estop the Legislature in the protection and reformation of some of this great evil I for one believe the communities have the right to pass upon these great questions.

MR. SANDERS—I would like to ask the gentleman if he has read line 39 of this first section, which provides that “The General Assembly shall pass general laws for the cases enumerated in this section?” There was no attempt, in reporting this subdivision, on the part of the committee, to interfere with any dispensary system or license system whatever in Alabama. I will state that I, for one, am a firm believer in the dispensary. I believe very much in the importance of that system for the small communities in certain counties in the State; and I certainly would not have consented to any subdivision, which, in my opinion, would attack the dispensary system in Alabama. We provided at the foot of this section that it shall be the duty of the General Assembly to pass general laws providing for all the matters enumerated in this section. In other words, no dispensary now established shall be affected by this subdivision; and hereafter if any municipality or county desires to establish a dispensary system, the Legislature shall provide a general law by which all persons who desire to come within that system, by complying with the requirements, may be able to do so.

MR CUNNINGHAM—Suppose the General Assembly fails to do that, what would be the course of the community that may want a dispensary or a high license or prohibition? I am not a lawyer and I am free to confess that I don't know exactly what this 9th provision expresses; but when you authorize a municipality to deal exclusively in the sale of spirituous, vinous and malt liquors, you are conferring upon that municipality a special privilege. There is no doubt about it. I do not want to submit at this time to the people of Alabama a great question such as this, without their having an opportunity of realizing the fact that in the future they shall have the same privileges as in the past in regulating this question.

I am perfectly willing to yield to the opinion of the distinguished lawyers on this floor as to what this 9th section means; but to the unsophisticated element, like myself, it strikes me that it knocks in the head all these great questions; and I am unwilling to sit by and allow it to be done without protesting. If I am wrong in my assumption I don't insist on the amendment; but if I am right I do insist upon it; and I say this Convention should not go before the people of Alabama with any masked designs upon the moral reformers of this State.

MR. deGRAFFENREID—Whether you are right or wrong, the amendment makes it plain.

MR. CUNNINGHAM—It occurs to me that it does.

MR. deGRAFFENREID—And it cannot do any harm if you are wrong.

MR. CUNNINGHAM—In any event it expresses it pretty plainly and I introduce the amendment for discussion with the hope that you will leave this thing open so the communities in this State can settle this question.

MR. O'NEAL—You don't think this would interfere with a dispensary now established by law?

MR. CUNNINGHAM—Certainly not. I want to say if the people of this State approve of this as a method of reforming the liquor traffic, and it is a good one, it should not stop where it is now, but should be permitted to extend its beneficent effects over every community in the State of Alabama; and the time will come when it would be a good thing to apply it to the whole State from the Tennessee River to the Gulf. I don't want anything in the Constitution that prohibits any community from passing upon this great question; and therefore I shall insist upon the amendment.

MR. deGRAFFENREID—I rose for the purpose of offering the same amendment that was offered by the gentleman from Jefferson except with a different idea in view. I reside in a community where the sale of liquor is prohibited by law, where we don't have a dispensary and don't want it even sold there by a dispensary; and there are a great many sections of Alabama in the same condition. In fact, it is very doubtful whether the sale of liquor is a good thing in any town that is not able to afford police protection to its inhabitants. I know it is not a good thing in any Black Belt town. Now it seems to me that if this section is passed without the amendment of the gentleman from Jefferson the probability is that the Legislature will be inhibited from exempting towns, from the operation of the general law of the State, which permits the sale of liquor upon a license issued for that purpose. For that reason I am heartily in favor of the adoption of the amendment offered by the gentleman from Jefferson.

MR. MALONE—I want to say a few words in behalf of this amendment from a defensive standpoint. I hate to say anything, but as most of these gentlemen know, I come from the first place that established a dispensary in Alabama, where it has been a most wonderful success. I have studied the question carefully and I am thoroughly convinced and I think it is one question that ought to be regulated entirely locally. In the first place, it ought not to be put on a community that does not want it. I also question its success when forced on a community that does not want it in any way. I recognize that it does not interfere with the general proposition. But the main reason is this: that the general law brings it into local politics; and I think I can appeal to any man on this floor who is familiar with it and he will say that under the general law it is almost impossible to keep that question out of politics. Under the local law, if any community wants it, you can establish



it. It is a fact that a great many of the dispensaries, which were established under the general law, have changed to a local law. A local law can be so framed so as to practically keep it out of your other matters. Personally, I started the dispensary question in our community. I have studied it from a business standpoint and I am willing to stand upon the reputation and success of ours; and from my intercourse with it, I do not believe it is a success or ever will be a success if adopted by the State and county or anything else except purely under local option in the hands of those people right there, whether they want it or whether they do not. There is a certain amount of interest that is absolutely necessary to take in it; and you can not arrive at it in any other way, except by having this personal interest in it and any proposition that will take it out of local hands and put it into politics, I think, in my opinion, will be a curse upon the country; and I hope from that standpoint the amendment will be adopted.

MR. WILSON (Clarke)—I offer a substitute for the amendment proposed by the gentleman from Jefferson.

The President here resumed the chair.

The substitute was read as follows: "Amend by striking out sub-division 9."

THE PRESIDENT—The question is on the substitute for the amendment of the gentleman from Jefferson.

MR. WILSON (Clarke)—There are two phases to this proposition. It seems to me to illustrate the un wisdom, if I may use that word, of putting that subdivision in the Constitution. It has been called to the attention of the Convention that it would not be wise to put such a clause in the Constitution which would operate against whiskey laws. That, Mr. President, is only one subject of legislation I believe it would be unwise to force upon the whole State and every community in the State alike. I believe there are other subjects of legislation which cannot be framed under a general law to operate on every community, every person, every township, and every county in this State alike. This subdivision, it seems to me, if allowed to stand, would prevent you from exempting from any general law on any subject, any community in this State. Now it seems to me, with the great diversity of interests which exist in the different sections of the State, the Pine Belt, the Black Belt, and the mineral district, in the larger cities, and in the thinly settled counties it would be unwise to say that whatever general law is passed must operate upon every community in this State alike, and cannot be repealed for any community in this State, and no community in this State can be exempted from it.

The argument against including in this subdivision whiskey laws illustrates just one branch of legislation that should not be

hampered in this way. It strikes me that quarantine is another subject that might be added, and no doubt there are many others which may be added, which should be exempted from this proposition, and I believe the safest plan is to strike out this subdivision, which forces you to make a general law apply to every community alike and prevents any community from getting out from under the influence of it. It seems to me we would sufficiently restrict local legislation when we name the many subjects we propose to name in here, about which there shall be no local legislation. Now, why say that every general law must apply to every community alike?

MR. DENT—I have an amendment which I propose to offer, but I am perfectly willing to vote for the amendment offered by the gentleman from Clarke. If that amendment is adopted I am satisfied, but even then I would like to have the privilege of offering an amendment to the section. It seems to me, Mr. President, that the reasons given by the gentleman from Clarke are potent. This system of procrustian legislation is not wise, and it is not desirable. We cannot make a suit to fit everybody, on every occasion and under all circumstances, and there should be some exceptions. The debate upon this floor in reference to the question of taxation of cities, and their rights, demonstrated that, and I beg the Convention not to be hasty in adopting this class of legislation. We sometimes get a little too democratic, we want everybody to be the same size, to wear the same size clothes, and sleep in the same length bed. It is not a wise thing to do, and I hope that the amendment of the gentleman from Clarke will prevail.

MR. O'NEAL—I do not think this subdivision is susceptible of the construction which has been given to it. It certainly was not the intention of the Committee to interfere with the laws in reference to dispensaries or the liquor traffic. Suppose this is stricken out, we know that one of the ways by which local laws are passed by the General Assembly, is the passing of the general law and then exempting from its operation all cities or towns or counties, where the members do not wish the law to apply. The General Assembly passes the general law and the gentleman from Jefferson or some other county will rise and move to except that county, and so county after county is excepted, and there you have a local law under the guise of a general law. The purpose of this is to prohibit legislation of that kind.

MR. VAUGHAN—I want to ask if the adoption of this section would refer to the bird law?

MR. O'NEAL—It would have to be provided for by a general law, and provide some mode by which it will operate in the different counties as their necessities may require.

MR. VAUGHAN—Could Dallas County have a different bird law from the State bird law?

MR. O'NEAL—There was an effort made to incorporate in the report of the Committee some provision about game laws and it was defeated in the Committee upon the grounds stated.

MR. VAUGHAN—Then would the State law apply to all of the counties alike?

MR. O'NEAL—If there is a State game law it must be a general law.

Now the exemption of any person, corporation, county, township, municipality or association from the operation of any general law is prohibited. Argument was made before the Committee that this might interfere with the sale of liquor in the counties, local option and so on. That was not the purpose of this subdivision. The Legislature can pass a law about local option by which local influence can adopt it by an election of the people.

MR. CUNNINGHAM—Suppose the Legislature were to refuse to do that, what would be the status of the community that wanted it, the Legislature to the contrary notwithstanding?

MR. O'NEAL—If the Legislature refused to pass a general law, the people would defeat the Legislature, if they did not respond to their wishes. Of course, we cannot guarantee that the Legislature will carry out the wishes of the people on all subjects.

MR. CUNNINGHAM—I desire to ask one more question. Suppose a bill is introduced as has been done, for a State dispensary law. Under this subdivision, if I happened to represent the county of Jefferson, I could not move to strike it out of the bill.

MR. O'NEAL—No, you could not.

MR. CUNNINGHAM—Then that takes away from communities the right of local self-government on this question or any other question?

MR. O'NEAL—No, the result would be that no general law would be passed except in this way. The general law might be passed on the subject of dispensaries which would provide that any county which desired to avail itself of the dispensary might do so by submitting the question to a vote of the people. That could be done under a general law and that is the proper way in which it should be done. I do not think it was the intention that this subdivision should apply to dispensaries, but even assuming that it does have reference to the dispensary, as the gentleman from Jefferson has assumed, the Legislature could then pass a general dispensary law by which any county in the State could adopt the provisions of that law by a vote of its people. You

could pass a general law to that effect in reference to local option, instead of coming down here and fighting before the committees in the Legislature to get a dispensary in your county, a general law would be passed and you could go back to your people, and if your people wanted a dispensary, they could secure it by an election.

MR. BOONE—This Section reads "Exempting any person, corporation, county, township, municipality or association from the operation of any general law." Would that prohibit the General Assembly from regulating the courts of the State in a special way?

MR. O'NEAL—That is especially excepted. If the gentleman will turn to Section 26 he will see that it reads "no special, private or local law, except a law fixing the time of holding courts, shall be enacted in any case," that is therefore, expressly excepted.

MR. BOONE—But the exception covers only the time of holding court and would not cover any special court in any county where the needs of the people might require a special court, but the courts of the whole State would have to be the same.

MR. O'NEAL—You mean as to the rules of procedure?

MR. BOONE—As to the organization of the courts in the several counties.

MR. O'NEAL—That would not have any effect on that. This says "excepting any county from the operation of any general law." The purpose of that Section as I stated, was to prevent the Legislature, under the guise of a general law, from passing a local law. That has been the way in which the prohibition against local laws has been evaded in nearly all of the States of the Union. A member introduces a general law, and then exception after exception is made, until you have nothing but a local law.

It seems that the argument of the gentleman from Jefferson is unsound, even giving it the construction which he claims may be placed upon it.

MR. PILLANS—I would ask if, in the case of the passage of the law, introduced as a general law, and one county or a number of counties were excepted, would that not make it a local law so as to fall within the prohibition? For example: Suppose a game or bird law, such as the one that was introduced two sessions back, were passed, with the exception of Montgomery County, would not that be a local law under the provisions of your Section, and haven't you got ample provisions in your Section to reach that case of a bill originally framed as a general law, becoming a local law by the taking out of one or more counties?

MR. O'NEAL—That was incorporated in there because numerous decisions of the courts of the States have held that where a general law is introduced and the exception of town after town or city after city has been made, that it still remains a general law within the meaning of a Section like the one in the present Constitution, and out of abundant caution we have incorporated this provision into this Article.

MR. PILLANS—May I ask another question? Do you not think that the same result that you desire to reach could be better attained by a clause which would distinctly show that it was levelled at that particular sort of evil and not a Section so broad as this.

MR. O'NEAL—I do not think this is too broad, Mr. President. As I was going to say, the argument was made in the Committee that the reason why there was objection to local option laws and prohibition, was because frequently the counties could get relief before the Legislature that they could not get before the people. That if the matter was left to the people the local option law would probably be defeated, and that the Legislature would sometimes grant local option when the people would defeat it. That did not appeal to my sense of right, because I think that where the people of a county will not vote for local option, the Legislature should not foist such a law upon them. I believe all these dispensary laws and local option laws ought to be left to the people of the particular community which is affected. I say if you give this Section the construction given it by the gentleman from Jefferson even, the Legislature can pass a general law providing that any county in Alabama can, by a submission of the question to the vote of its people, take advantage of the benefit of a dispensary, or the local option law, and there is absolutely nothing in the Section to prevent it.

MR. CORNWELL—In Section 5 of this Article don't you think that you have provided for all the objections that have been raised?

MR. O'NEAL—I think so. If the Legislature should do that, I think it will answer most of these objections.

MR. SANDERS—I desire to ask the gentleman a question. If the Legislature should refuse to pass a general law for the subjects enumerated in this Section, would not the members thereof thereby violate their oath to support the Constitution?

MR. O'NEAL—Yes sir.

MR. SANDERS—It is not optional with them, but is it not a command for them to pass a general law?

MR. O'NEAL—In answer to the gentleman from Limestone, by reading the whole section it will be seen that it is made the absolute duty of the General Assembly to pass general laws on every subject as to which they are prohibited from passing local laws. You take up this whole list and while the Legislature is forbidden to pass local laws on these subjects, they are required if this section is adopted to pass a general law covering the subjects. They would violate their oaths if they did not do so.

MR. COLEMAN (Greene)—I would like to hear your opinion in regard to the privilege taxes in the different municipalities throughout the State. Do you want to pass a general law fixing the rate of privilege taxing power of the cities and towns in the State of Alabama?

MR. O'NEAL—You might classify the cities and pass such laws.

MR. COLEMAN (Greene)—You might. Every town and city in the State have different privilege tax laws. How would you make a general law cover these cases?

MR. O'NEAL—That will be provided for when the Legislature passes a general law fixing the powers of each city in the State of the different classes. The cities in the State will be classed and there will be a charter passed providing for the needs of each city and town in the State and giving them their rights and defining their powers, and there will be a general law. Such a law would give them power to levy license taxes on any subject. I will ask the gentleman from Greene why could that not be done, and would it not be done?

MR. COLEMAN—You would have a general law that would allow any city or town to pass any license law that they saw proper?

MR. O'NEAL—You might limit it to such subjects that the general law might provide for.

MR. WALKER—Why would not it be competent for the Legislature to pass general laws under which the local authorities could make different regulations upon the subjects that have been mentioned here, in reference to the sale or use of intoxicating liquors, in reference to bird laws, and in reference to privilege taxes? It would not require at all, that the same regulations should prevail all over the State, but a general law would provide for the regulation of those matters by the local authorities.

MR. O'NEAL—I am obliged to the gentleman for the suggestion. That was the idea of the committee, that it would be the duty of the Legislature to pass general laws giving the local authorities authority to pass such laws as the demands and necessi-

ties of the particular community might require, so that every community could have its local laws, without applying to the General Assembly for them.

THE PRESIDENT—The time of the gentleman from Lauderdale has expired.

MR. ASHCRAFT—The question which has been raised in connection with this clause as to the regulation of the liquor traffic is one of great importance. We are told that the Legislature may pass general laws, whereby particular localities may enact such liquor laws as will suit their own ideas. Now, sir, if this law shall be enacted into the Constitution, and at the next Legislature a bill should be introduced authorizing every county, municipality or district to take a vote in that particular community, as to whether or not prohibition should be put into effect the result would be that the large cities and towns in this State, where it is exceedingly difficult to regulate the liquor traffic, would be opposed to giving the people of other communities the opportunity they desired. The liquor traffic, if it is ever regulated in this State, must be regulated first in the small communities, and as the general idea of temperance grows, to reach the larger ones gradually. When you propose this general law giving every community the right to vote for or against prohibition, you will at once have arrayed against that general law the strong whiskey interests in the State, and the result would be that no such general law could be passed notwithstanding that a multitude of small communities might like to have the privilege and opportunity of voting upon the question themselves.

MR. WALKER—Is it not a fact that in States in which provisions such as this prevail, that there is a successful regulation of the liquor traffic by the communities, under the general laws?

MR. ASHCRAFT—I am not prepared to answer that question. I understand that so far, in human experience, no successful regulation has ever been made of the liquor traffic. I understand however, we are growing in that direction, and I believe, Mr. President, that the enactment of this clause will cut off for many years to come the growth that we are making in this direction, because it will deprive the smaller communities of the opportunity of exercising the privilege that they have of securing from the Legislature local option.

MR. O'NEAL—I desire to ask the gentleman a question. Does he think that the Legislature ought to grant to any community local option or a dispensary contrary to the wishes of a majority of the people in that community?

MR. ASHCRAFT—No, sir; I do not think that the Legislature ought to grant any particular community any privilege contrary to the wishes of a majority in that community, but I do think that

the Legislature ought to grant to a community privileges that they may desire, but which may be against the wishes of a majority of the whole State to have applied to their localities, and the proposition here is that before we can do anything in any particular locality, we must get the consent of the whole State to have a general law passed giving the same right in every locality. That is the point that I am making, Mr. President.

MR. O'NEAL—If the gentleman will allow a suggestion, I desire to say that if he will read this section he will see that we absolutely require the Legislature to pass general laws on every subject enumerated in this section. Then if the section would have the effect which the gentleman claims, to prevent a county from having a dispensary unless there was a general law on the subject, it would be the duty of the Legislature, under their oaths to pass a general law by which the county could secure the benefit of a dispensary, and by the same law the Legislature could provide for its adoption by a vote of the people or in some other manner. Certainly that is the matter which may be left to the Legislature. It was not the purpose to prevent any county or any community from having a local option law or a dispensary, or to have the control of the liquor traffic in any mode or manner that the people might wish.

MR. ASHCRAFT—I did not say, when I yielded, that I would allow the gentleman to make a speech in my time. Mr. President, the conflicting interests between the large cities and the small cities, and the country communities, would be so great that no general law could ever be passed that would provide for the different localities in this State, and for taking such action as suited the particular localities, because the action taken in the locality must be adjusted to the state of the public sentiment in that locality.

MR. WEATHERLY—Would an amendment of this kind answer any of the objections you have offered. Amend sub-division 9, Section 1, by adding immediately after the words "general law" the following: "Hereinafter enacted, provided that the Legislature may enact such special laws, provided for the exemption of any county, township, or municipality, from the operation of any general law, by submitting any such special law to the vote of the people to be affected thereby, for ratification or rejection, under proper regulations, as may be prescribed by law."

MR. ASHCRAFT—I do not think that would meet the objection. There are so many other questions besides the question of local option. I mentioned that as one particular instance, but there are a multitude of objections. And the regulation of the particular needs of villages and small towns, and of various localities, can never be provided for under a general law. It could never be provided that they could express their choice in regard to certain



things, or lay out for themselves certain plans, without laying open that same privilege to certain other large and controlling communities which would always prevent action by the smaller communities.

MR. LONG (Walker)—If the gentleman will allow a suggestion, would not the operation of this prevent the Legislature from granting any license to Confederate soldiers, or anyone else?

MR. ASHCRAFT—I cannot answer the question.

MR. O'NEAL—Not at all.

MR. SANFORD (Montgomery)—I wish to make the suggestion that this discussion upon the striking out of the ninth subdivision has degenerated into a question of local option, or anti-local option, dispensary or anti-dispensary. If you strike that out, this committee on Local Legislation was constituted in vain. You might strike out every one of the twenty-six sub-divisions there where you say the Legislature cannot act, because you can exempt every one of them on the ground that it is merely a local question. I suggest that the motion of the gentleman from Clarke be laid upon the table. It strikes out the whole object of the Committee on Local Legislation. I withdraw the motion if Mr. Watts wishes to make any remarks.

MR. SMITH (Mobile)—So far as I am concerned, I hardly know what the limitations of this provision are. I have not given it any very great consideration, but it seems to me that there are quite a number of questions that will arise and create a difficulty which we will not be able to obviate. Take, for instance, the question of arranging the judiciary of this State. If this section stands, I do not see how it is going to be arranged so as to meet the views of at least twenty-five different portions of the State, nor do I know about the other seventy-five portions. Certainly, on the Committee on Judiciary the lawyers from seventy-five different portions of the state seem to want different arrangements in regard to the judiciary, and if those seventy-five portions of the State of Alabama cannot in any possibility be exempted from a general statute, it seems to me that according to the sad stories I have heard, we will be in a deplorable condition in that respect at any rate.

Take, for instance, the passage of a general law dividing the State into as many judicial circuits, and providing that each such circuit shall contain a definite number of counties, and then leave this section in, that no county can be exempted from that law, and one of two conditions will exist; either you will have Circuit Courts and Chancery Courts in certain counties that have no use for them and which are fully provided for by these inferior courts, or else you would have to abandon a system which seems to have grown in favor, that of having separate and special courts in certain

counties which are sufficiently large and have sufficient population to maintain such separate courts. Now, as I understand the experience of the bar in this State, it has been that these special courts for such counties as are able to maintain them, have become a great convenience, and these counties would not do without them under any circumstances, yet with this provision, we will either fasten for all time upon these counties a double judiciary, which is entirely unnecessary, or strike down this special system that has obtained such favor among the people. The same condition of affairs exists as to the Chancery Court. Then, I take it, there is a feeling in this Convention that there ought to be some elasticity about the system, so that common law jurisdiction in some cases could be conferred upon the Chancellor, and chancery jurisdiction upon the common law judges. That, however, could only be done in a certain number of counties. It would be practicable only where some special arrangement was made with regard to that particular territory. Under this provision, as I understand it, no such arrangements could be made. And from what I have heard, the Justice of the Peace, who has been a subject of much anguish and tribulation among the fraternity in this Convention, some unwilling to do any hardship to those gentlemen who occupy that exalted position, while others are willing to consign their names to perdition. There will necessarily have to be some special provision in regard to that matter in one portion of the State, and another portion of the State. That, as I understand it, under this section, could not be done. Then, again, the quarantine law has been suggested—

MR. O'NEAL—If the gentleman will allow an interruption, suppose an amendment striking out the words "county, township, municipality," is offered, would not that meet your objections?

MR. SMITH (Mobile)—It will never meet every objection that I have.

MR. O'NEAL—And insert the word "private" before "corporation."

MR. WEATHERLY—That is the effect of my amendment.

MR. HARRISON—With the gentleman's permission, I would like to suggest to him along that line, of striking out the word "person" and inserting the word "individual," and striking out the words "county, township and municipality," and we would have the same provision that is in the present Constitution, in Section 23 of Article 4.

MR. SMITH (Mobile)—Of course I do not know what is the sense of the Convention in regard to that matter. If an amendment to that effect is adopted, I shall certainly have no objection to the provision, but if it stands as it is without going into the

details. I will call attention to the fact that the quarantine law cannot be uniform. If you were to undertake to fasten upon Mobile only such quarantine laws or provisions as are necessary for other portions of the State, neither ourselves nor the balance of the State would be protected. We must have something beyond the general provision. If, on the contrary, you should fasten on the whole State the provisions which are necessary in order to guard the entrance, why you would have the whole State subject to unnecessary hardships and restrictions. The question of dispensary has been discussed by other. Then there is the question of the jury law. In the County of Mobile we have a special jury law, one that has worked to very much greater satisfaction, than the general laws of the State. Whether it could be operated in other counties, I doubt. Our own courts have not been in favor of enforcing the special jury laws that prevail in Mobile County, knowing that the other counties are not situated as that county is. I should certainly feel it a great calamity to strike down such laws as those which I have mentioned. The jury law has protected us from professional jurors, and from a number of evils that are incidental to the general system. Therefore as the subdivision now stands I am very much opposed to it, but amended according to the suggestions which have been made, I would have no opposition to it.

MR. WATTS—I will address myself, first to the objection of the gentleman from Mobile, Mr. Smith, as to the organization of the Circuit and Chancery Courts. It is well known to every lawyer that when an instrument is considered it is taken altogether. The Constitution of 1875 had a provision in it "Nor shall the operation of any general law be suspended by the General Assembly for the benefit of any individual, corporation or association." Now if we put into the Constitution the 9th subdivision which we have in this report, prohibiting the exemption of any person, corporation, county, township, municipality or association, from the operation of any general law, and we afterwards put into this Constitution the matters which the gentleman suggests about circuit and chancery courts and the legislature establishing inferior courts, or other sort of courts, when the court takes this whole instrument up for construction, it will say that this means that the legislature shall not exempt any municipality, county or corporation, from the operation of any general law, except in the particular matters, which this Constitution points out in other parts of it can be done. In other words, the whole matter will be considered *in pari materia*, and make it harmonize as one whole, and not make it operate in the manner which the gentleman has suggested.

MR. SMITH (Mobile)—I would like to ask the gentleman if his experience in the law justifies him in feeling such a great confidence in his prophecy as to what the Supreme Court will decide in the next thirty or forty years, and I will further ask the gentleman whether or not he considers it wise to put conflicting

provisions in the Constitution because he knows what the Supreme Court will do in untangling them.

MR. WATTS—I will answer both of the questions. Judge Rice on one occasion when he was asked whether or not courts were presumed to know the law said that they were, but sometimes it was a very violent presumption. Therefore, I cannot say what the courts will decide, except I believe that they will decide what is right.

As to the other proposition, I do not think this at all conflicts in the manner in which the gentleman contends.

It is a well known fact, Mr. President, that in a General Assembly, there are frequently introduced laws which are intended to be of general operation, and immediately there is a jumping up here and there throughout the House of Representatives, or the Senate, as the case may be, and there is an exception of this county or that, or the other county from the operation of the general law, and the result is that no man, be he as old as Methusalah or as wise as Solomon, can ever tell what the law is in any particular part of the State, unless he has made a particular study of it.

MR. PILLANS—Your sixth section declares what a local law is does it not?

MR. WATTS—Yes, sir.

MR. PILLANS—Can that not be so framed as to make it perfectly plain, that if a law is passed which calls itself a general law, but contains the exception of some part of the State, that it will fall within the inhibition as a local law.

MR. WATTS—I have no doubt that some amendment of this question can be made which will be satisfactory to this Convention.

MR. PILLANS—And reach that difficulty?

MR. WATTS—Yes, sir. We have plenty of illustrations of the operation of this particular ninth subdivision. We have got a general law on our statute books now, preventing the relieving of minors of the disabilities of non-age; we have got a general law providing for the organization of different kinds of corporations; we have got a general law providing for the corporation of cities and towns; we used to have a general law to relieve married women of the disabilities of coverture, and we have a general law in reference to divorce and alimony. The object of this provision is for the legislature to make some general provision which applies to the whole State in reference to particular matters and not to have the acts of the legislature covered with laws affecting Montgomery County, or Mobile County, or Lee County and the various

other counties of the State. We have got two other provisions in here, where we say that the General Assembly shall pass a general law covering the matters which we have prevented them making the subjects of local legislation, and then further in Section 5 of this report, we provide, that the General Assembly may, by general law, confer upon the courts of county commissioners, Boards of Revenue or other courts, such power of local legislation and administration touching all matters and things not provided for by general law, and not inconsistent with the provisions of this Constitution, as the General Assembly may from time to time deem expedient. That means that the legislature may pass a general law by which they may provide for all such subjects as they cannot cover by a general law, such as the provision of my friend from Jefferson in relation to liquor. They can provide that the courts of county commissioners or the board of revenue in the respective counties, or some other court, shall have the right to determine in their particular community, what shall prevail, local option or otherwise.

Now we are not striking at the dispensary, and we are not striking at the sale of liquor, any more than we are striking at anything else, but all of you know that about one-half of the time of the General Assembly for twenty-five years past has been taken up in passing local laws of some sort, kind or character, and a great deal of the valuable time of the State of Alabama has been expended in determining whether or not liquor should be sold within two or three miles of the Black Jack Stop on Jim Jones's plantation, or some other such foolishness.

Now the intention of this Convention, we took it, when the Committee on Local Legislation was appointed, was to put some safeguard around this matter which would prevent a waste of the people's money. If you are going to strike down this subdivision, and if you are going to say that the legislature may still continue to except from the operation of the general law, any locality, any individual, any corporation or any association, why then what is the use of having a Committee on Local Legislation at all. Why not turn the doors wide open and tell them to go ahead as they have done in the past, making the general laws about the size of Webster's spelling book, and the local laws about twenty times their size. As shown the other day by my distinguished friend from Montgomery, Governor Oates, when he exhibited the general laws, you saw they were about as thick as my finger while the local laws were about six inches thick. The object of this Committee is to break down this practice of passing local laws and wasting the people's money and to direct the legislature to something that is important to the whole State instead of providing some measure to please some particular locality.

MR. FITTS—I move the previous question upon the subdivision and both of the amendments.

MR. WILSON (Clarke)—I hope the gentleman will withdraw the motion as I want to ask unanimous consent to withdraw my amendment and offer this. It seems to meet the views of certain members.

MR. O'NEAL—I ask unanimous consent to read an amendment which I think will cover the objections made and which will be acceptable to the entire Convention.

The amendment of Mr. Wilson of Clarke, was read as follows:

Strike out the word "person" and insert in lieu thereof the word "individual; strike out the words "county, township, municipality," where they occur in subdivision 9, and insert the word "private" before the word "corporation."

MR. O'NEAL—That is exactly the amendment which I desired to offer.

MR. WILSON (Clarke)—I ask unanimous leave to withdraw my substitute heretofore offered.

MR. FITTS—Now I renew the motion for the previous question.

MR. BANKS—I hope the gentleman will withdraw that a moment. As a member of the Committee, I want to say a word or two.

THE PRESIDENT—The gentleman from Clarke asks unanimous consent to withdraw the amendment offered by him and insert in lieu thereof, the amendment which has just been read. Is there objection?

MR. HOWZE—I object, because I would rather have it stricken out than to have it amended.

MR. BROOKS—I now move under rule 24, that the gentleman from Clarke be allowed to withdraw his amendment.

Upon a vote being taken the motion was carried.

MR. WILSON (Clarke)—Now I offer the substitute which has just been read.

MR. BANKS—I do not propose to detain you with anything like a speech. I only want to make an explanation. I want to say in behalf of certain members of the Committee that they do not agree to this subdivision. There was a difference of opinion in the committee. This question was discussed before the committee, and I think it was the consensus of opinion that the effect of the adoption of this sub-division would be just as has been stated by those who have opposed it upon the floor; that it would

have the effect to restrain any further local legislation on the subject of whiskey, and on all other subjects that would have to be provided for by general law. It was the opinion of the committee that there was a general law providing for the sale of whiskey.

MR. O'NEAL—Will the gentleman allow an interruption?

MR. BANKS—Yes, sir.

MR. O'NEAL—I desire to call attention to the fact that the particular section under discussion was read to the committee and adopted without objection.

MR. BANKS—I hope that the chairman will remember that I voted against it to the very last.

MR. SAMFORD (Pike)—I rise to a point of order. Matters which were before the committee are not proper to be stated before this house.

THE PRESIDENT—The point of order is well taken.

MR. O'NEAL—I rise to a point of order. I understood the gentleman to make a statement that the committee had never adopted it, and I did not want to let the statement pass unnoticed that the committee had reported a provision which has not been adopted.

THE PRESIDENT — The gentleman stated that the committee was not entirely unanimous.

MR. O'NEAL — Then I misunderstood the gentleman and withdraw what I said.

MR. BANKS—It was understood by the committee that the effect the provision would have would be just as stated to the Convention, and there were members of the committee that objected to it on that account. It is urged by those who advocated the adoption of this sub-division that these questions are provided against in Sub-division 39. As has been said upon the floor of this Convention, this is only advisory. It does not compel the General Assembly to adopt laws at all, and it is with the General Assembly as to whether it does that or not. In Section 5 of this report, it says that the General Assembly may, by general law, confer upon the courts of County Commissioners, Boards of Revenue and other courts. It grants to the General Assembly the power to do that thing, but it does not impose the absolute duty and requirement that they shall do it. I am opposed to the sub-division as it stands. I would be in favor of it with the amendment that was offered by the gentleman from Jefferson. That is all that I wish to say.

MR. HOWZE—It strikes me that this is one of the most important sections in this whole Article. I think without this, the

work of this committee will have been in vain, as my friend from Montgomery has said. I see no reason in the world why any county, any municipality or any individual should be exempted from a good general law. I do not think any general law ought to be passed unless it is a good one, and unless it is necessary, and I do not think any community or any county should be exempted from it. Suppose, for instance that a general law should be passed on any matter, why should any county or municipality be exempted from the operation of the law. A general law is passed against gambling, why should any county be exempted from the operation of that law? Therefore, why could not a general law be framed so as to meet the requirement of every community in the State?

I do not think that this sub-division affects the matter of liquor traffic. If it did, I should certainly oppose it, but as I conceive it means simply this, that a general law may be passed upon this subject. For instance, if the Court of County Commissioners, or other authorities of the county, may, on a request of a majority of the people of the county, have prohibition, have a dispensary, or local option, but it ought to be a general law all over the State, covering the whole State, and there should be no reason why any county should be exempted from the operation of such a law. It is not the working of the law, but it is the manner of creating the law that you desire to reach, and that you desire to make uniform throughout the State.

As to this matter of quarantine, why should not the general quarantine law be established in such a way that it will operate properly in every county in this State? Why should there be any county or municipality from the operation of the law. As I said in the beginning, no general law should be passed that is not for the good of the whole State. We cannot guarantee, of course, that the general law shall be passed, but we make it the duty of the Legislature to pass general laws upon all questions that may arise in the State, and we require that those general laws shall be uniform throughout the State. My friend has mentioned the matter of the bird law. It should not operate to affect that in the slightest, because a general law can be passed so as to provide for a bird law to be established in any community, or in any county or district in the State; but that law should be uniform. The only thing that I have heard against this provision which casts a doubt upon my mind at all, is the matter of the judiciary, but as my friend from Montgomery has suggested, that is arranged for by a subsequent section of the article. Therefore I cannot see, to save my life, why this provision which is intended to remedy such a great evil should be condemned by this Convention. As my friend from Montgomery said, wherever a general law, even though it is a good one, is offered in the General Assembly, it is a constant thing to see members rise up and exempt



their counties from it. The result is a confusion of the law, and no lawyer in the State knows what the law in the different counties is in which he goes to practice. He has to learn it before he goes there. We have a confusion of the law by reason of the fact that the different counties have different laws all over the State. I think it is highly important that this subdivision of the article should be allowed to remain as it is, and I hope that this Convention will vote down the substitute and the amendment.

Mr. Jones secured recognition.

MR. JONES (Montgomery)—I will yield to the gentleman from Lauderdale to make a statement.

MR. O'NEAL—I stated just now that the committee would accept the amendment offered by the gentleman from Clarke, but on a conference with the committee, I find that they are opposed to it. I desire to say, however, that the committee is willing to accept the amendment suggested by the gentleman from Jefferson, Dr. Cunningham.

MR. JONES (Montgomery)—I move to lay upon the table the original subdivision, the substitute and all of the amendments, my reason for that is that the debate shows that we do not know what we are doing in respect to this matter—

MR. WATTS—I make the point of order that the gentleman cannot discuss a motion to table.

MR. JONES (Montgomery)—I will make the statement and then I will make my motion afterwards.

A DELEGATE—Move to recommit the subdivision.

MR. JONES (Montgomery) — No, I won't, I am going to make the motion that I got up to make. It is very evident that we are shooting in the woods and do not know who we are going to hit and the apprehension among intelligent lawyers and intelligent business men as to what this thing means is a sufficient reason why this Convention should go slow. Now I move to table the subdivision, the substitute and all of the amendments.

MR. WATTS—I call for the ayes and noes on that, and a division of the question.

MR. WHITESIDE—I make the point of order that you cannot lay a part of a section on the table. This is only a subdivision of the section.

MR. FITTS—In response to that I make the point of order that before the section was started into, at the request of the committee it was by unanimous consent agreed that each subdivision should be treated as a section, and so disposed of.

MR. WHITESIDE—Not voted on as a section.

MR. O'NEAL—But considered as a section.

THE PRESIDENT—The present occupant of the Chair was not in the Chair when that agreement was arrived at but it seems in view of the agreement that the point of order would not be well taken.

MR. REESE—I desire to make an inquiry. Suppose the amendments offered are not laid upon the table, and yet the original subdivision is laid upon the table. You have got an amendment hung up in the air with the section gone.

THE PRESIDENT—A division of the question has been called for and the Chair will submit the questions in their order.

MR. REESE—That was the point I desired information on. Suppose the Convention refuses to table the amendment and yet they table the original subdivision?

THE PRESIDENT—That is a complicated state of affairs that the Chair will deal with when it arises and not anticipate it. The ayes and noes are demanded, the question is, is the call for the ayes and noes sustained?

The requisite number arising the call was sustained.

THE PRESIDENT—The Chair will submit first the question on the motion to table the substitute offered by the gentleman from Clarke. As many as favor laying the substitute on the table will say aye and those opposed no as your names are called.

#### AYES

Bartlett,	Heflin, of Randolph,	Porter,
Blackwell,	Hinson,	Reynolds (Henry),
Byars,	Howze,	Robinson,
Case,	Inge,	Rogers, of Sumter,
Chapman,	Jenkins,	Sanders,
Cofer,	Jones, of Montgomery,	Sanford,
Cornwall,	Jones, of Wilcox,	Sentell,
Craig,	Kirkland,	Smith, Mac A.,
Davis, of Etowah,	Kyle,	Smith, Morgan M.,
Duke,	Long, of Butler,	Sollie,
Espy,	MacDonald,	Spears,
Foshee,	Malone,	Waddell,
Gilmore,	Martin,	Walker,
Glover,	Oates,	Watts,
Greer, of Calhoun,	O'Neal, of Lauderdale,	Whiteside,
Haley,	Phillips,	Wilson, of Washington,
		TOTAL—48

#### NOES

Ashcraft,	Barefield,	Beddow,
Banks,	Beavers,	Bethune,

Boone,	Hodges,	Pearce,
Brooks,	Hood,	Pettus,
Browne,	Howell,	Pillans,
Bulger,	Jackson,	Pitts,
Burns,	Jones, of Bibb,	Reese,
Carmichael, of Colbert,	Jones, of Hale,	Renfro,
Carnathan,	Kirk,	Reynolds, of Chilton,
Cobb,	Knight,	Rogers, of Lowndes,
Coleman, of Greene,	Ledbetter,	Samford,
Cunningham,	Leigh,	Searcy,
Davis, of DeKalb,	Long, of Walker,	Selheimer,
Dent,	Lowe, of Jefferson,	Sloan,
deGraffenreid,	Lowe, of Lawrence,	Smith, of Mobile,
Eley,	McMillan, of Wilcox,	Sorrell,
Eyster,	Maxwell,	Spragins,
Ferguson,	Merrill,	Stewart,
Fitts,	Miller, of Wilcox,	Thompson,
Fletcher,	Murphree,	Vaughan,
Foster,	NeSmith,	Weatherly,
Freeman,	Norman,	Williams, of Barbour,
Grayson,	Norwood,	Williams, of Marengo,
Greer, of Perry,	Palmer,	Wilson, of Clarke,
Harrison,	Parker, of Cullman,	
Heflin, of Chambers,	Parker, of Elmore,	

TOTAL—76

#### ABSENT OR NOT VOTING

Messrs. President,	Henderson,	O'Rear,
Almon,	King,	Proctor,
Altman,	Locklin,	Studdard,
Burnett,	Lomax,	Tayloe,
Cardon,	McMillan (Baldwin),	Weakley,
Carmichael, of Colbert,	Miller, of Marengo,	White,
Coleman, of Walker,	Moody,	Willet,
Graham, of Montgomery,	Morrisette,	Williams, of Elmore,
Graham, of Talladega,	Mulkey,	Winn,
Grant,	O'Neill (Jefferson),	
Handley,	Opp,	

So the motion to table was lost.

MR. JONES—For the purpose of simplifying matters, I ask unanimous leave to withdraw the motion to table the original subdivision and the amendment offered by the gentleman from Jefferson.

To which objection was made.

MR. O'NEAL—I move that the rules be suspended and the leave be given the gentleman to withdraw his motion.

MR. JONES (Montgomery)—It will simplify matters and save time.

THE PRESIDENT—It is moved that the gentleman be permitted to withdraw his motion to table the amendment of the gentleman from Jefferson, and the original subdivision.

Upon a vote being taken the consent was given.

MR. REESE—I move the previous question on the pending substitute and the original Section and amendment.

MR. LONG (Walker)—I make the point of order that the gentleman from Dallas is out of order, because we have not disposed of the motion to lay on the table at this time.

THE PRESIDENT—The motion to table with withdrawn by consent of the Convention.

MR. LONG (Walker)—That applied to the amendment but not to the original proposition.

THE PRESIDENT—It applied to the motion to table the original Subdivision 9 and the amendment of the gentleman from Jefferson. The other part of it the Convention has refused to lay upon the table.

MR. CUNNINGHAM—The purpose for which the amendment offered by myself having been accomplished in the amendment offered by the gentleman from Clarke, I ask unanimous consent to withdraw the amendment offered by me.

MR. PETTUS—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman will state the question of inquiry?

MR. PETTUS—Was not the amendment proposed by the gentleman from Clarke offered as a substitute for that offered by the gentleman from Jefferson, and would not the adoption of the substitute get rid of the amendment proposed by the gentleman from Jefferson?

THE PRESIDENT—It seems to the Chair it would have that effect.

MR. CUNNINGHAM—Before the motion for the previous question is put I desire to ask the gentleman from Dallas to withdraw one moment that I may ask one question of the Chairman of the Committee.

MR. REESE—You will renew the motion when you conclude?

MR. CUNNINGHAM—Yes, I will. The amendment now pending, offered by the gentleman from Clarke, includes the word "association." Does not that mean benevolent associations, Knights of Pythias, Knights of Honor, United Order of Red Men, and the various other sort of folks, Woodmen of the World, Odd Fellows, whose express purpose is one of benevolence. Will not that mean that they shall not be exempted from taxation and other privileges and immunities that are now granted by the general law of this State. I would like to have an answer to that question.

MR. O'NEAL—It is not my understanding that it has any such meaning. Of course, you could not pass any law giving the Knights of Pythias of Lauderdale County privileges which you did not confer on them in Jefferson County. You would have to pass a general law giving the Knights of Pythias privileges in the State, and could not pass local laws for particular lodges in particular localities, but you could pass a general law covering the State, and there is no reason why a general law would not cover every subject that is now covered by law.

MR. REESE—I desire to ask the Chairman of the Committee if that is not a matter that is provided for in the Article on Taxation. Are these associations not already exempted from taxation in the Article on Taxation?

MR. O'NEAL — They are exempted under the Article on Taxation.

MR. REESE—I move the previous question.

MR. CUNNINGHAM—I beg the gentleman's pardon. I had forgotten.

THE PRESIDENT—The question is shall the main question be now put?

MR. LONG (Walker)—I move to lay Subdivision 9 of Section 1 on the table.

MR. O'NEAL—I rise to a point of order, that the question now is upon the substitute offered by the gentleman from Clarke. That is the matter pending before the House.

MR. LONG (Walker)—I move to lay the amendment to the subdivision, and the original subdivision on the table.

MR. O'NEAL—That is out of order. We have just passed on that.

THE PRESIDENT—The Convention has just refused to table the substitute offered by the gentleman from Clarke. The question is shall the main question be put.

The main question was ordered, and upon a further vote being taken the substitute of the gentleman from Clarke was adopted.

MR. WATTS—I move to lay on the table Subdivision 9 as amended, because it is of no value whatever with the amendment in it.

THE PRESIDENT—The question is on the amendment of the gentleman from Jefferson as amended by the amendment of the gentleman from Clarke.

A reading of the amendments was called for.

MR. O'NEAL—There is some confusion as to the question before the House. I ask the Chair to state it again.

THE PRESIDENT—The Chair understood the gentleman from Jefferson to offer an amendment, and the gentleman from Clarke to offer a substitute to that amendment; the question now is on the amendment offered by the gentleman from Jefferson, as modified by the substitute offered by the gentleman from Clarke.

MR. O'NEAL—I rise to a point of order. I understood the gentleman from Jefferson to state that the substitute covered his amendment, and hence his amendment was no longer before the House.

THE PRESIDENT—It does not change the necessity of submitting the question to the Convention.

MR. LONG (Walker)—A point of order. I moved to lay on the table awhile ago, and the Chair ruled the question was on the amendment of the gentleman from Clarke, and we took a vote and adopted that amendment. The gentleman from Jefferson withdrew his amendment and therefore the question is not on the adoption of an amendment at all.

THE PRESIDENT—The gentleman is mistaken, the gentleman from Jefferson has not withdrawn his amendment. The Chair will remind the gentleman from Walker that the gentleman from Jefferson stated that he would withdraw the amendment and asked leave to do so, but it was suggested that the adoption of the substitute would cover the ground, and he withdrew his request to withdraw the amendment. The question now is upon the amendment offered by the gentleman from Jefferson as amended by the substitute offered by the gentleman from Clarke. As many as favor the motion to adopt the amendment as amended will say aye.

And the motion was carried.

MR. O'NEAL—Do I understand the amendment of the gentleman from Jefferson is adopted by this vote, or this substitute is in lieu of his amendment?

THE PRESIDENT—The amendment offered by the gentleman from Jefferson is adopted as modified by the substitute offered by the gentleman from Clarke. The question now is upon Subdivision 9 as amended.

MR. WATTS—I move to lay it on the table.

THE PRESIDENT—A motion to table is not in order after the previous question has been ordered.

MR. WATTS—Then I call for the ayes and noes.

The call for the ayes and noes was not sustained, and upon a vote being taken, Subdivision 9 as amended was adopted.

MR. DENT—I rise to a parliamentary inquiry. I understand that the Convention had just voted to adopt the substitute offered by the gentleman from Clarke not encumbered by the amendment offered by the gentleman from Jefferson. I would like to understand just exactly what the record shows. That was my understanding and I think the understanding of the majority of the Convention, that the amendment offered by the gentleman from Jefferson was not a part of the Section, and I would like to know what the record shows upon that question.

THE PRESIDENT—The gentleman from Jefferson offered his amendment to Subdivision 9, thereupon the gentleman from Clarke offered his substitute. The substitute struck out certain words, but the Chair does not remember whether it struck out the identical words included in the amendment offered by the gentleman from Jefferson or not. If it did, then the amendment offered by the gentleman from Jefferson is disposed of, otherwise it has been adopted.

MR. WILSON (Clarke)—I would like to ask the President if the substitute offered by myself was adopted, if the substitute did not then become the amendment?

THE PRESIDENT—The substitute of the gentleman from Clarke was adopted in lieu of the amendment offered by the gentleman from Jefferson.

MR. DENT—And the amendment offered by the gentleman from Jefferson is not a part of this subdivision?

THE PRESIDENT—It is not.

MR. DENT—All right.

Subdivision 10 was read as follows:

Tenth—Providing for the sale of property of any individual estate.

THE PRESIDENT—The question is on the adoption of Subdivision 10—

MR. deGRAFFENREID — You were not in the Chair this morning when the House suspended the rules under a motion, by which it was agreed that each subdivision should be read, and unless there was objection or amendment offered to the subdivision, it should be taken as passed by the House without a vote.

THE PRESIDENT—The Chair will continue the same method that the House agreed upon this morning.

Subdivision 11 was read as follows:

Eleventh—Changing or locating a county seat.

MR. PILLANS—I move to strike out Subdivision 11.

Mr. Pillans amendment was read as follows:

Amend Section 1 of Article on Local Legislation by striking out Subdivision 11.

MR. PILLANS—This amendment contains no criticism of the Committee. The object they seek to obtain, however, will probably be better secured by the adoption of some such Section as the Committee on State and County Boundaries has reported, which will provide that a change of county seats shall only be made after an election by the people. If that plan is adopted of changing county seats only after an election, with either a majority or a two-thirds majority of the people assenting thereto, there will be no occasion for putting this clause in the Constitution, making this restriction on local legislation, for the reason that the clauses which has heretofore existed would no longer exist. Moreover, if you undertake to provide by general law for changing of county boundaries by the Court of County Commissioners it will invite a struggle in every county in the State of Alabama. I take it if you pass a general law inviting the counties to pass on the question of changing the court houses, you would cause a great deal of dissention, whereas, if you leave it out of this part of the Constitution and leave it in the other as my friend says it will be productive of good results. Then whenever a court is desired to have a county seat changed, or suppose that such a thing was desired in the county, the Legislature will act upon the bill which the local member offers, pass it, and then leave the matter to the people of the county, and those people will either defeat it or ratify it as they please. That is my reason for striking it out here.



MR. deGRAFFENREID—I move to lay the amendment offered by the gentleman from Mobile on the table.

Upon a vote being taken a division was called for and by a vote of 54 ayes and 32 noes the amendment was tabled.

MR. BAREFIELD—I offer an amendment.

The amendment was read as follows: By striking out the word “seat” and adding the word “site.”

MR. WATTS—I move to lay the amendment on the table.

MR. COBB—I desire to call the attention of the Convention to the fact that the Committee on County Boundaries has dealt with this whole question and this section is not at all necessary.

MR. deGRAFFENREID—Does it conflict with their report?

MR. COBB—I do not know that it does, but it may.

MR. WADDELL—I ask the gentleman from Macon does not this really give it more force and effect?

MR. COBB—I do not know that it does, without having the report of the Committee on County Boundaries before me, but if it is in order, I move to defer the further consideration of this subdivision until the Committee on County Boundaries reports.

MR. O'NEAL—I want to say that it is impossible for any member of this Convention to forecast what a committee is going to report or what action the Convention is going to take in reference thereto. There can be absolutely no objection to this provision. It is simply prohibiting the Legislature from passing a law changing the county site of any particular county. They can do it by general law, because we require here that on all these subjects as to which we prohibit the Legislature from passing local laws, that it is their duty to pass general laws. We want to prevent another Shelby County case.

MR. WEATHERLY—I rise to a point of order. There is nothing before the Convention.

MR. O'NEAL—There is a motion before the Convention to indefinitely postpone the consideration of this subdivision.

THE PRESIDENT—The Chair will overrule the point of order.

MR. COBB—Will the gentleman from Lauderdale allow me just a moment? There is a conflict here between these sections—

MR. O'NEAL—We have a committee here for the purpose of reconciling these conflicts.

MR. COBB—That committee cannot strike out where this House has adopted. Where they conflict, they will have to come back to this Convention to have a reconciliation. They are invested with no such power as I understand it, and what I want to suggest to my friends—

THE PRESIDENT — The gentleman from Lauderdale has the floor.

MR. COBB—By his consent I simply desire to say in this report from the Committee on County Boundaries it is provided it may be submitted to a vote of the people in the county, the question of changing a county site.

MR. O'NEAL—That is absolutely not in conflict. We say to the Legislature you must not pass any local law. You can pass a general law by which you submit to the people of any county in the State the question of whether they desire to move their local court house. That is no conflict at all.

MR. OATES—The gentleman from Lauderdale has made the point that I was about to suggest. The two are not in conflict. This simply provides against the Legislature changing a county seat. The other provision from the County Boundaries Committee provides the method by which it may be changed by a vote of the people.

MR. JENKINS—I would like to make a suggestion. My recollection of the report of the Committee on County Boundaries, is that the representative of each county must first introduce a bill referring this matter to a vote of the people. Now this says there shall be no special act changing a county seat.

MR. O'NEAL—Would that be a special act?

MR. JENKINS—Would not there be a conflict if the representative introduced a special act?

MR. O'NEAL—Not at all. Let me ask the gentleman this question. Suppose the Legislature should pass the general statute that no county seat shall be removed unless such question of removal is first submitted to the people of that county, would not that be a general law. Of course that would be and there would absolutely be no conflict between that section and this when we say they must provide a general law for that matter.

MR. JENKINS—But they must put the procedure in force by a special act in each county?

MR. O'NEAL—Oh, no; we simply here say to the Legislature that you shall not pass a law by which the county of Lauderdale, or any other county in the State, can change its county site.

You must pass a general law by which that question can be submitted to a vote of the people.

MR. O'NEAL—Now I renew my motion to lay on the table, the motion to defer the consideration of this subdivision.

MR. REESE—I hope that the gentleman don't want to gag this Convention.

MR. O'NEAL—I will withdraw in favor of the gentleman from Dallas.

MR. COBB—I desire to ask the gentleman a question. Under the statement that has just been made what becomes of Section 6 where you define a general and local law. You say a general law within the meaning of this act shall be a law which applies to the whole State and a local law is a law which applies to any political subdivision or subdivisions less than the whole. Now is not a county less than the whole?

MR. O'NEAL—Certainly, but let me put this proposition to you. Suppose the general Assembly should pass a law that hereafter before any county site can be removed in this State, the matter must be submitted to a vote of the people within the county and providing the machinery for the election. Is not that a general law?

MR. COBB—No, sir.

MR. O'NEAL—Why isn't it?

THE PRESIDENT—Will some of the gentlemen who are occupying the floor please be seated. The gentleman from Lauderdale has the floor.

MR. COBB—I am up with his permission. You were asking me a question.

MR. O'NEAL—Would not that be a general law?

MR. COBB—I think not, because it is the law affecting only a subdivision of the State of Alabama.

MR. O'NEAL—It affects the whole State.

MR. COBB—How can the removal of—

MR. O'NEAL—It affects the whole State.

MR. O'NEAL—The gentleman don't gather the idea I am trying to convey. You provide by a general law that hereafter when the people of a county desire to remove a county seat it shall be done by submitting the question to a vote of the people of that particular county, and you can provide the mode by which the election machinery can be carried out.

MR. HEFLIN (Chambers) — Under the rule the house stands adjourned.

THE PRESIDENT—It is not 1 o'clock yet.

MR. REESE—I rise to a question of personal privilege.

THE PRESIDENT—The gentleman will state the question of privilege.

MR. REESE—I requested the gentleman from Lauderdale to withdraw his motion to table, and I have stood on my feet since that time, and the gentleman was in his chair.

The clock struck one.

MR. HEFLIN (Randolph)—I renew the point, that the House stands adjourned.

Thereupon the Convention adjourned until 3:30 o'clock p. m.

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#### AFTERNOON SESSION

The Convention met pursuant to adjournment, there being 100 delegates present upon the call of the roll.

Leave of absence was granted to Mr. Burns for today on account of sickness.

MR. LONG (Walker)—I rise for the purpose of introducing a resolution.

There being no objection, the resolution was read by the clerk as follows:

Resolution No. 233, by Mr. Long of Walker:

Resolved, That in order to save some of the precious time of this Convention, and at the same time afford opportunity to the parliamentary tacticians of the Convention to display their talents with typewritten speeches, Monday in each week, without pay to speakers, be and it is hereby set apart and consecrated to the exclusive use of the said parliamentary tacticians.

Resolved, further, That on said day all delegates except the tacticians, be and they are hereby excused from attendance; and that no deduction from their pay shall be made on account of their absence.

Resolved, further, That the day set apart to the tacticians shall not be deducted from the total number of working days for adopting ordinances and other incidental business of the Convention.

Referred to the Committee on Rules.

THE PRESIDENT—The pending question is the motion of the gentleman from Macon to postpone consideration of Subdivision 11 until the Committee on State and County Boundaries takes up the consideration of the report of that committee.

MR. COBB (Macon)—I ask unanimous consent to withdraw the motion to postpone.

There being no objection, the motion to postpone was withdrawn.

MR. REESE—I think the more this provision is understood the more it will recommend itself to this Convention. As a member of the Committee on State and County Boundaries, I have given this matter some consideration and thought. The purpose is the withdrawal of this matter from the Legislature and placing it back with the people. The argument that was urged before the Committee on State and County Boundaries was the question of the removal of the court house which so frequently enters into politics. The selection of members of the Legislature was made with a view as to whether the court house should or should not be removed. To remove that condition, Mr. President, the committee reported Section 6 of an Article that no county site shall be removed except by a two-thirds vote of the qualified voters of the county, and it prescribes that there shall be an election——

MR. BOONE—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. BOONE—The point of order is this, that there was an amendment offered to this section which was voted down. Judge Cobb then made a motion to indefinitely postpone, and that, by unanimous consent, was withdrawn. There is no opposition to it, and by the agreement of this morning where there is opposition or amendment to a section of this ordinance, we pass on to another one, and that is the attitude now as I take it, no objection appearing.

MR. REESE—If there is no objection, I do not desire to speak.

THE PRESIDENT—It seems there is no objection. The Secretary will read the next section.

MR. JENKINS—I desire to offer an amendment.

The clerk read the amendment as follows: Amend Subdivision 11, "except upon a two-thirds vote of the people of the county to be effective."

MR. JENKINS—The reason I offer this amendment is this: There might be a general law passed upon the subject of removing a county seat, leaving it to the Board of Revenue, as I understand, to order this vote. I believe that it would be unwise to leave that question to the Board of Revenue, but leave it to the respective counties of the State.

MR. SAMFORD (Pike)—Will the gentleman permit a question?

MR. JENKINS—Allow me to make a statement first.

MR. SAMFORD—I think if you will answer my question. I would offer a suggestion, and the Section would read this way with your amendment: "The General Assembly shall not pass a special, private or local law for the purpose of changing or locating a county seat except upon a vote of two-thirds of the voters of the county.

MR. JENKINS—To be effective.

MR. SAMFORD—I will ask the gentleman how the legislature is to know about two-thirds of them voting. This is to prohibit them from passing any sort of a law for removing the county court house.

MR. JENKINS—It could be put in the bill.

MR. SAMFORD—This is as I understand it only a local law.

MR. JENKINS—Let me make my statement. If this law passes like it is there can be no special act changing a county seat passed by the legislature. It is to be done by a general act all over the State of Alabama something like this: that whenever a majority of the citizens of a county petition the legislature or board of revenue, that there shall be a vote upon the question in the respective counties. A great many counties do not want to be put under a general provision, they do not desire any change of county seat, and they would only be put in a position of inviting a vote upon the question. I want to fix it so that any one county can authorize a special act authorizing the removal of a County seat, but I want it provided so that that act is not valid unless the act says upon a two-thirds vote in compliance with this Constitution. If you leave it like it is, they cannot have that special act starting this movement for a vote for each county that desires it, you will have to pass a general law all over the State of Alabama inviting a question of the removal of the county seat in every county in the State, and there will be confusion and a discord in every county over the question.

MR. REESE—Will the gentleman allow me to ask him a question?

THE PRESIDENT—Will the gentleman permit an interruption?

MR. JENKINS—Certainly.

MR. REESE—What would be the objection to passing a general law providing that no election for this purpose shall be held in a county unless a certain proportion of the qualified voters of that county sign a petition to the court of county commissioners, say two-thirds or whatever proportion you desire to fix?

MR. JENKINS—That is my objection, it would invite a vote in every county.

MR. O'NEAL—Permit me to ask a question.

MR. JENKINS—Certainly.

MR. O'NEAL — Do you favor the legislature having the power to pass any law they please changing or locating a county site in any county in the State?

MR. JENKINS—Yes, upon a two-thirds vote of the people of the County to be effective.

MR. O'NEAL — That is a different proposition entirely—that is a matter for general legislation.

MR. JENKINS — If this amendment goes through it will force them to put that in the law.

MR. GREER (Calhoun)—Don't you think it would be wise to prevent any more Shelby County cases coming up in the future?

MR. JENKINS—I would rather not pass on that right now. It is a very serious proposition and when it comes up we will give it careful consideration.

MR. PILLANS—Will there be a Shelby County case, or any controversy like that, under that amendment if adopted, where it is submitted to the vote of the people?

MR. JENKINS—No, there can be no Shelby County case because the man that comes to the legislature knows that when he passes a bill changing the county seat it has to go back to the people and be voted upon by a two-thirds vote, and he is not going to introduce a bill calling for the removal of the county seat unless he knows there is an overwhelming sentiment in the county for it, it would be suicide and political death to him to do it.

MR. FOSTER—Permit me to ask a question. Would not that be the effect of the adoption of this Section and the Section in the report of the Committee on State and County Boundaries?

Would it not have the same effect, that is a general law providing that the county seat should not be changed without a vote of two-thirds of the qualified votes of the county?

MR. JENKINS—I will answer the gentleman this way; that report does not say how the two-thirds shall be obtained.

MR. FOSTER—Could it be in any other way than by an election?

MR. JENKINS—They might leave it to a general law to determine it, but I insist that it is the intent of that report for it to come through the Legislature. Why? Because along with it is this proposition, that no new county seat can be created except upon a two-thirds vote of the people, but before they can pass on it, the Legislature must pass an Act authorizing a vote in the counties—by inference, though not in so many words, to apply to the county seats, the beginning of the movement should come from the Legislature.

MR. COLEMAN (Greene)—May I ask a question?

MR. JENKINS—Certainly.

MR. COLEMAN—Are you in favor of refusing to a majority of the qualified voters of a county the right to change the county seat?

MR. JENKINS—Well, I had the amendment originally drafted for the majority of the voters, but the Committee on State and County Boundaries fixed a two-thirds vote, and, in order to be in harmony with it, I changed that and made it a two-thirds vote, to be in harmony with the majority report.

MR. COLEMAN—Are you in favor of the majority of the qualified electors, if they see proper, to change their county seat?

MR. JENKINS—Yes, I would favor that.

MR. COLEMAN—Then I do not see how you can ask for this amendment.

MR. JENKINS—I yielded to the majority of the committee and voted for the two-thirds rule.

MR. DAVIS (DeKalb)—I move to lay the amendment on the table.

A vote being taken, the amendment was laid upon the table.

The clerk read Sub-divisions 12, 13 and 14 as follows:

Twelfth—Providing for a change of venue in any case.

Thirteenth—Regulating the rate of interest.



Fourteenth—Granting any exclusive or special privilege, immunity or franchise whatever.

MR. ASHCRAFT—I desire to offer an amendment: Amend Paragraph 14 by inserting after the word “granting” the following words: “to any individuals, private corporations or associations.”

MR. O'NEAL—I move to lay that amendment on the table.

Motion to lay on the table was withdrawn on request.

MR. ASHCRAFT—That amendment is offered so as to make it harmonize with the same principle that is involved in Paragraph 9 which has been adopted. They struck out the words “county, township, municipality” for certain reasons which were well made out before the Convention, and now down here is: “Granting any exclusive or special privilege, immunity or franchise whatever.” Certainly, the Legislature ought not to be prevented from granting to the counties or the municipalities the right to regulate the liquor traffic. The whole value of our work under Section 9 would be lost if we allowed Section 14 to be adopted in its present form. There never could be another dispensary established, of course, because that is granting to the municipality a special privilege or immunity or franchise. For that reason, I think it is important that the amendment should be allowed, otherwise it would shut off all possibility of municipalities regulating the liquor traffic along lines that are being now tried in this State.

MR. CUNNINGHAM—I desire to offer a substitute.

The clerk read the substitute as follows: “Amend Sub-division 14 of Section 1 by adding after the word “whatever” the provisions of the sub-division “shall not apply to any township, municipality or benevolent association.”

MR. CUNNINGHAM—I agree heartily with the gentleman from Lauderdale in his statement that under Sub-division 14 it is absolutely impossible to ever establish in the State of Alabama another dispensary to be operated exclusively by any county, township or municipality, or any other political sub-division of the State. It absolutely prohibits any further dispensaries, there is no question about that. The amendment offered by the gentleman from Lauderdale, or that offered by myself would obviate that inhibition.

MR. O'NEAL—Would the gentleman permit me to call attention to Section 23 of the Declaration of Rights: “that no ex post facto law, or any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the General Assembly.”

MR. CUNNINGHAM—I understand that cities and towns have not any bill of rights. If I am not mistaken as to what a bill of rights means, it has reference to the people, and not to any organization for the government of the people?

MR. FOSTER—May I ask a question? Do you know of any instance in which an exclusive franchise has been granted to towns or municipal corporations?

MR. CUNNINGHAM — Every towns in the State of Alabama if it is operating a dispensary today is operating under an exclusive franchise.

MR. FOSTER—Is that a franchise, or delegation of power to the government itself?

MR. CUNNINGHAM—If I understand it, that is what it is.

MR. FOSTER—It is a delegation of police power and not a franchise.

MR. CUNNINGHAM—I believe that the amendment offered by myself, or that offered by the gentleman from Lauderdale, will obviate the mystery that is clouded in Subdivision 14. If there is any negro in the wood pile for which of course the committee is not responsible, why this kills the negro—that is all I am after. I disclaim any responsibility on the part of the committee for it.

MR. O'NEAL—I hope the Convention will not adopt the amendment. As I stated, in the Bill of Rights, we have practically the same provision that the Legislature shall never grant "any irrevocable or exclusive grant or special privileges or immunities." The only word we add is "franchise." Every gentleman knows that the right of a city or a county to sell liquor is a police power, a police power granted by the Legislature to that subdivision of the State. It is not a franchise. This provision has been in the Bill of Rights ever since Alabama was a State, and now we are asked to strike out one of the fundamental principles of the Constitution, a Bill of Rights which has existed here from the time to which the memory of man runneth not to the contrary, simply because it might interfere with a local liquor law.

MR. ASHCRAFT—If already in the Bill of Rights why do you want to repeat it?

MR. O'NEAL—We do not want the Legislature to pass any local law.

MR. ASHCRAFT — If they are prohibited by the Bill of Rights from granting any special privileges, then why should we put it in here again that they should not be allowed to grant any special privileges?

MR. O'NEAL—Because the Bill of Rights did not use the word “franchise” that is the reason we added this provision.

MR. ASHCRAFT—Then strike it out.

MR. O'NEAL—We do not want any special franchise.

MR. ASHCRAFT — Will you consent to have the words special immunities and privileges stricken out?

MR. O'NEAL—No, sir.

MR. ASHCRAFT — Then, why put it in the Constitution twice?

MR. O'NEAL—So that the Legislature shall not pass any local law granting any special franchise or immunity whatever, and the word “franchise” is added to it.

MR. ASHCRAFT—I desire to ask a question.

MR. O'NEAL—Certainly.

MR. ASHCRAFT—The right granted by the Legislature to a municipality to conduct a dispensary is a special privilege granted by the Legislature to the municipality, is it not?

MR. O'NEAL—No. I think not, it is a part of the police power of the government which is delegated to a subdivision of the State government. I think where the Legislature grants to a town or a county the right to sell liquor, it is granting a part of the police power.

MR. SMITH (Mobile)—I wish to call attention to an error in the statement as to what is contained in the Bill of Rights which reads “an exclusive grant of special privileges or immunities.” In this paragraph it reads “granting any exclusive or special privilege.”

MR. O'NEAL—Granting any franchise or special privilege in this provision.

MR. SMITH—That's a different thing in your article the word “or” takes the place of the word “of.”

MR. O'NEAL—“Exclusive grants of special privileges or immunities” and this says “Granting any exclusive or special privilege immunity or franchise whatever,” I cannot see any difference in the two, except that we add “franchise.” I move to lay the amendment and the substitute upon the table.

A vote being taken, the amendment and substitute were laid on the table by a vote of 53 ayes to 47 noes on a division.

MR. O'NEAL—I move the adoption of that subdivision, and on that I call for the previous question.

THE PRESIDENT—The Chair had recognized the gentleman from Hale.

MR. deGRAFFENREID—I move to lay Section 14 on the table.

MR. BLACKWELL—On that I call for the ayes and noes.

On the motion to table, the call for the ayes and noes was sustained.

Upon the call of the roll, the vote resulted as follows:

#### AYES

Ashcraft,	Graham, of Talladega,	Norman,
Banks,	Greer, of Perry,	Norwood,
Beavers,	Heflin, of Randolph,	Parker (Elmore),
Bethune,	Hodges,	Pearce,
Blackwell,	Jones, of Wilcox,	Pillans,
Boone,	Kirkland,	Robinson,
Brooks,	Knight,	Rogers (Lowndes),
Carmichael, of Colbert,	Kyle,	Rogers (Sumter),
Cunningham,	Ledbetter,	Sanford,
Dent,	Long (Walker),	Smith (Mobile),
deGraffenreid,	McMillan (Wilcox),	Smith, Morgan M.,
Duke,	Malone,	Stewart,
Eley,	Merrill,	Thompson,
Eyster,	Murphree,	Wilson (Clarke),
Foshee,		

TOTAL—43

#### NOES

Messrs. President,	Fletcher,	Jones, of Hale,
Almon,	Foster,	Jones, of Montgomery,
Barefield,	Freeman,	Leigh,
Bartlett,	Glover,	Long (Butler),
Beddow,	Graham, of Montgomery,	Lowe (Jefferson),
Browne,	Grant,	Lowe (Lawrence),
Bulger,	Greer, of Calhoun,	Macdonald,
Burns,	Haley,	Martin,
Byars,	Harrison,	Maxwell,
Carnathon,	Heflin, of Chambers,	Miller (Wilcox),
Chapman,	Hinson,	Oates,
Cobb,	Hood,	O'Neal (Lauderdale),
Cofer,	Howell,	Palmer,
Cornwall,	Howze,	Parker (Cullman),
Craig,	Inge,	Pettus,
Davis, of DeKalb,	Jackson,	Pitts,
Davis, of Etowah,	Jenkins,	Porter,
Espy,	Jones, of Bibb,	Renfro,

Reynolds (Henry),	Smith, Mac. A.,	Weatherly,
Sanders,	Spears,	White,
Sanford,	Spragins,	Whiteside,
Searcy,	Vaughan,	Williams (Barbour),
Selheimer,	Waddell,	Williams (Elmore),
Sentell,	Walker,	
Sloan,	Watts,	

TOTAL—73

# ABSENT OR NOT VOTING

Altman,	Kirk,	Reese,
Burnett,	Locklin,	Reynolds (Chilton),
Cardon,	Lomax,	Sollie,
Carmichael, of Coffee,	McMillan (Baldwin),	Sorrell,
Case,	Miller (Marengo),	Sorrell,
Coleman, of Greene,	Moody,	Studdard,
Coleman, of Walker,	Morrisette,	Tayloe,
Ferguson,	Mulkey,	Weakley,
Fitts,	NeSmith,	Willet,
Gilmore,	O'Neill (Jefferson),	Williams (Marengo),
Grayson,	Opp,	Wilson (Washington),
Handley,	O'Rear,	Winn,
Henderson,	Phillips,	
King,	Proctor,	

MR. O'NEAL—There seems to be some confusion as to the rule which we adopted this morning. The agreement was that we read each of these sub-divisions, and unless objection was made they were considered as passed. To obviate any further discussion on this, I move the previous question on the adoption of this subdivision. I call for the previous question now, it seems to me that is the only plan.

MR. PETTUS—I would ask if the gentleman objects to accepting an amendment: Provided, it shall not apply to any municipalities.

MR. O'NEAL—We have already voted that down, therefore I move the adoption of this subdivision, and upon that I call the adoption of this subdivision.

THE PRESIDENT—The Chair does not understand the rule under which we are pursuing. Are we adopting each of the subdivisions as we come to them? The whole Section will be submitted and we have not taken any vote on the other subdivision.

MR. O'NEAL—I move, then, that we pass to the next subdivision.

MR. SAMFORD (Pike)—Do I understand the ruling of the Chair is that Subdivision 14 is to be considered adopted without a vote on it, when objections has been made to it?

THE PRESIDENT—The present occupant of the Chair was out when the consideration of the matter was entered upon. The understanding of the Chair was that the Convention would pass from one to another of these subdivisions, and when the Section was completed there would be a motion to adopt the Section.

MR. SAMFORD (Pike)—My understanding of the agreement was that where there was no objection or amendment to a subdivision when read, that it would be considered as adopted, and whenever there was an objection or amendment that a vote would be taken on the subdivision and that these subdivisions for the purpose of passing them are being treated as Sections of this Article.

THE PRESIDENT—We cannot adopt a Constitution by an understanding; there must be a vote of the Convention.

MR. SAMFORD—I understood it was unanimous consent.

MR. REESE—I rise to a point of inquiry.

THE PRESIDENT—The gentleman will state the point of inquiry?

MR. REESE—Do I understand our rules are suspended? Then, by what sort of vote can we get back to our system of voting? I move that we resume the rule of this Convention.

MR. SAMFORD—As I understand it, I still have the floor, I have not yielded to anybody.

MR. FOSTER—Will the gentleman allow me to interrupt?

MR. SAMFORD—Certainly.

MR. FOSTER—I desire to state to the President that my understanding was as the gentleman from Pike says, that when the subdivision was read and there was no objection nor amendment offered, it was considered adopted until the end of the Section was reached, and then the whole Section was to be voted on.

MR. SAMFORD—I desire to offer an amendment.

MR. O'NEAL—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. O'NEAL—I have called for the previous question on the adoption of that Section.

MR. SAMFORD—The call has not been sustained.

MR. O'NEAL—It has not been put to a vote of the House—before the gentleman took the floor. I had made the motion. The

agreement made this morning was, if no objection was made to a subdivision when read, it was considered adopted, and in event objection was made the same rules as applied to a Section would apply to this.

I made a call for the previous question, and I insist on that call.

MR. SAMFORD—I insist on holding the floor. My understanding was that the gentleman called for the previous question and that the call was not sustained, and that the floor was yielded and I got the recognition of the President, and as long as I have the floor I have a right to offer an amendment to the Section, as I understand the rules of the Convention.

MR. O'NEAL—Let me call attention to the fact that he rose to a point of order to demand the yeas and nays.

THE PRESIDENT—It is exceedingly difficult for the Chair to enforce a rule made in his absence, and the limits of which are not yet clear to the Chair.

MR. OATES—The delegate from Tuscaloosa stated it correctly. I move that that be considered the rule in the consideration of these subdivisions. He stated it with perfect correctness, everything that was read passed, but wherever objection was made or amendments offered a vote will be taken on that.

THE PRESIDENT—That a special vote might be taken on that?

MR. OATES—Yes.

MR. O'NEAL—I move the previous question. The gentleman from Pike rose to a point of order before the Chair had an opportunity of putting my motion. When the Chair disposed of his point of order, the question recurred upon my motion demanding the previous question.

THE PRESIDENT—The understanding is as stated by the gentleman from Montgomery, that wherever there was objection, that a separate vote should be taken on that subdivision. Then it seems to the Chair that the gentleman from Lauderdale was in order in moving the previous question on this subdivision, and it would be the duty of the Chair to put that motion. The gentleman from Pike arose and the Chair inquired for what purpose? The Chair's recollection was to make a point of order.

MR. GREER (Calhoun)—He arose to demand an aye and no vote, that was the purpose of his rising.

MR. SAMFORD—At that time I rose to demand an aye and nay vote and gained the recognition of the Chair.

THE PRESIDENT—The Chair would rule that the question would be upon the motion of the gentleman from Lauderdale. The question is, shall the main question be put, and upon that the gentleman demands the ayes and nays.

MR. SAMFORD—I do not care to demand the ayes and noes upon that, but I trust the Convention will not sustain the call for the previous question, so that an amendment may be offered to this Section.

THE PRESIDENT—The question is, shall the main question be now put?

MR. BROOKS—I would like to know whether the demand for the previous question is on the entire Section or subdivision?

THE PRESIDENT—The previous question on the subdivision.

A vote being taken, there were forty-six ayes and fifty-eight noes and the call for the previous question was not sustained.

THE PRESIDENT—The gentleman from Pike is recognized.

MR. SAMFORD—I desire to offer an amendment: Amend by adding after the word "whatever" the following: Provided, however, the legislature shall not be prohibited from authorizing any municipality or county from conducting a dispensary."

MR. O'NEAL—I rise to a point of order.

THE PRESIDENT—State the point of order.

MR. O'NEAL—The Convention has already passed upon the same proposition made by the gentleman from Calhoun.

THE PRESIDENT—It appears to the Chair the point of order is not well taken.

MR. O'NEAL—I call for the reading of the amendment of the gentleman from Calhoun—I may have misunderstood it.

THE PRESIDENT — The Chair will state to the gentleman from Lauderdale that he is informed that the amendment offered by the gentleman from Calhoun is not in the Clerk's office.

MR. SAMFORD—There is no member of this Convention who is so anxious or more anxious to limit local legislation than I am, but when the Committee on Local Legislation reports a clause or a Section that is susceptible of a construction that would limit the legislature of this State from moving along the lines of a great reform that has been started in this State within the last few years, I rise for the purpose of offering my protest, and whenever such provisions are offered by a committee, it occurs



to me that it is at least due to the Convention, composed of sensible men, that amendments and discussions should not be cut off on the important questions that are presented to it. Now, if it is not the object of this Committee to forbid the Legislature of this State from delegating the authority for the operation of dispensaries in the different localities in this State, then where is the objection to the amendment that I offer? If it is not the intention of this Committee to estop the Legislature of this State from creating dispensaries in the different localities, then I say, gentlemen of the Convention, that this amendment offered by me should be adopted. It can do no harm, and it certainly may prevent the doing of a great deal of harm by the Section as offered by the Committee on Local Legislation. Mr. President, I hope the amendment will be adopted and I now move its adoption.

MR. WALKER—It does not strike me that an amendment of this kind is at all necessary to accomplish the object of the gentlemen who have introduced amendments for this same purpose during the consideration of this article of Local Legislation. It is no more necessary, it seems to me, to reserve to the Legislature the right to pass local and special laws in reference to dispensary or any other method of dealing with the liquor traffic, than it is to reserve the right of establishing a stock business or a school business by general laws.

There are provisions in this Section, if you are looking to the establishment of local or special laws, that would not prevent the establishment of sock districts or school districts, but prevent their establishment by this particular means, local legislation.

MR. SAMFORD—Will the gentleman permit an interruption?

MR. WALKER—Yes sir.

MR. SAMFORD—Whenever a dispensary is established in a county, is it not the usual custom or method of the Legislature to give it the exclusive right to sell and the exclusive privilege of selling whiskey of all kinds within the limits of the county and within the territory that it expects to supply with liquor?

MR. WALKER—Yes, the usual method of doing it is by local or special laws.

MR. SAMFORD — Won't this bar them from granting a special or local law?

MR. WALKER—I will answer the gentleman's question in the course of my remarks. Now the object aimed at and the object these amendments, is not to tie the hands of the localities so that they can not dispose of these matters themselves. The operation of this article upon any county is not such as to prevent

these objects from being carried out by special or local laws. Now it has been suggested that the custom heretofore has been to carry out objects of this kind by special and local laws; but the people of Alabama have forgotten that such objects can be accomplished under a general law. Prohibition, such as provided in this Section in reference to local and special legislation has been in the Constitutions throughout the country. But at the same time there are found in the laws of various States provisions under which objects of this kind are as fully in the hands of the localities as they can possibly make them by local or special legislation. Alabama has been so accustomed to having each community to get its desires only through the avenue of local or special legislation, that it has forgotten and practically lost sight of the fact that these objects can be better accomplished under general legislation. Now the very object that has been mentioned here is that the liberty of the people should be preserved. I submit that it would be better accomplished by general legislation upon the subject. The object of securing localities the privilege of dealing with the liquor traffic in such a way as may suit the wishes of that locality, would be fully and completely accomplished under general legislation; and it is done, as a matter of fact, in other States of the country where they have prohibition against local or special legislation generally. It is not at all necessary. It is not at all necessary for the different communities of the State desiring different regulations in reference to the liquor traffic, or in reference to anything else, that their local desires shall not be accomplished by reason of the fact that local and special legislation is prohibited. All of these things can be provided for and all of them can be prescribed by the Legislature, under which the people, acting as a body, or through their constituted authority, can establish such rules and regulations upon these subjects, as they see fit to establish, and it is not at all necessary to preserve the verdict of the people in reference to these matters, to tie the hands of the Legislature. Now I submit what has been the character of the legislation upon the matter of the dispensary, upon the matter of local districts in reference to prohibition, or the regulation of the sale of liquor. Why it has been the localities simply speaking through the Legislature as their mouth-piece. It has not been the action of the legislative body itself. It has been the locality speaking through its members, and the legislative body as a whole has practically nothing to do with it. It has been local regulation pure and simple. What is the wisdom of perpetuating a system of that kind. Of fixing it so that the localities cannot act themselves directly upon the subject matters that they wish to act in reference to, but they must go through one spokesman in the Legislature who simply registers the local decree. Is there any necessity for that? Can it possibly be said that all of these objects cannot be accomplished so as to

leave complete freedom to the locality so as to disabuse their minds of the idea that to get relief in reference to these matters, they have got to go to the Legislature? It is not necessary at all, and whenever the Legislatures of Alabama are confronted with the situation that the different localities desire to make different regulation, each satisfactory to itself, provision will be made by general law for localities expressing their desires in some mode prescribed by a general law. That has been the course in other States. That will be the course in this State. Now the prohibition here of granting special privileges by means of local or State laws will not affect in any manner the sale or the prohibition of the sale of liquor in localities, but it will simply prohibit localities seeking to secure regulations that they desire for themselves, not among themselves, but through the Legislature. That is not at all necessary. Regulations can be made by which they can speak their minds, and make such regulations as they desire, and there can be no doubt but that the Legislature of Alabama will do as much as other States have uniformly done who make provision for the expression by localities, of their own desires in reference to these matters. Now that is the object that is sought to be accomplished by the amendments that have been made. Each one of them has suggested that you do not want to deprive any locality of its freedom of action in reference to these matters. The best way to do that is to provide by a general law for those localities expressing their desire in reference to these matters directly and not through one spokesman in the Legislature.

MR. ROGERS (Sumter)—If we say that no community shall have any exclusive privilege how could a general law reach it if you say in the Constitution that they could not have it. I want to know how the legislature could give an exclusive privilege if we say in the Constitution that they cannot have it.

MR. WALKER—I do not see the object aimed at by these amendments, are in the nature of exclusive privileges at all. They are simply methods of local regulations of matters. Certainly the liberty to different localities to make regulations satisfactory to themselves upon the liquor question or upon the question of killing birds, or anything of that kind, is not a special privilege.

MR. HARRISON—I will ask the gentleman if the first line of this section does not limit each of these subdivisions. It reads the General Assembly shall not pass a special or private, or local law in any of the following caes.

MR. WALKER—Certainly it is simply the prohibition of private or local law. It is not in any respect a regulation upon prohibition of the Legislature to provide complete regulations to cover these matters.

MR. CUNNINGHAM — Suppose that some county, municipality or community were to ask for an immunity from the sale of liquor, that is to say, for prohibition, in a local community within a certain distance of a church or something of that kind. Would not that be a special immunity to ask for that?

MR. WALKER—I think not.

MR. CUNNINGHAM — Would the Legislature have the right under that section to grant it within three miles of Bethel Church.

MR. WALKER — Certainly, but they would not have the right to grant it by means of a local or special law, but they might pass a general law by which all objects of that kind could be accomplished, such as is done everywhere else, by the passage of a general law under which the citizens of a particular locality can have their desires in reference to these matters completely effectuated without the necessity of going to the Legislature to do what the community itself ought to be allowed to do for itself. I submit, gentlemen of the Convention, that you are losing sight of the fact that the prohibition here is not against any of these objects at all but is simply against a certain objectionable method of obtaining those objects.

MR. ASHCRAFT—When you undertake to pass any general liquor law by the Legislature, wouldn't you be confronted with a powerful whiskey lobby which you would have to overcome to get any favorable local liquor legislation?

MR. WALKER—No more so than you would be confronted by a powerful liquor lobby in reference to exempting any particular locality in reference to a liquor law.

MR. ASHCRAFT—Would a lobby come here to defeat the enactment of a liquor law for Center Star in Lauderdale county for instance.

MR. WALKER—I suppose not. Not for Center Star.

MR. ASHCRAFT—What we are trying to do is to protect those particular localities from the influence of whiskey lobbyists.

MR. WALKER—Well, cannot that be done? Has the Legislature of Alabama become so paralyzed that they cannot adopt legislation which leaves to localities freedom of action in reference to these matters, so that they must perpetuate the system that has prevailed in this State, of localities not speaking directly upon these matters, but of getting relief only through the action of the local member of the Legislature, that is not necessary at all.

MR. OATES—I would like to ask the gentleman a question. You were asked just now about exclusive privileges. That means exclusively for a person or a particular locality. It does not mean that a general law could not be passed by which they can reach the objects desired that would be called exclusive under a local law. That is not the fact.

MR. WALKER—Certainly.

MR. MALONE—You said that there are localities operating under general laws. Is there any locality except South Carolina that is operating under a general law?

MR. WALKER—On the dispensary question, you mean?

MR. MALONE—Yes, sir.

MR. WALKER—I do not know of any State that has a dispensary system prevailing throughout the State except South Carolina, and I do not understand that it is the object of anybody here to establish in this Convention, or in the Legislature, a dispensary system to be operated throughout the State of Alabama. What I say is this, that under general legislation and under general laws provision can be made for the verdict of the action of each locality, to have a dispensary, or not to have it.

MR. MALONE—The gentleman misapprehends the entire question. It is the management of the dispensary in a manner that brings it into local politics that we are trying to avoid. Don't you know that is the trouble in South Carolina and under the general State laws it builds up a great machine? Would not that be the same case as if a general provision regulating how these various people should be elected in the counties? Right then, that would bring it into politics. That is the point; how are you going to keep the election of the officers out of politics except by a local law?

MR. WALKER—Well, under the method that has prevailed heretofore, the dispensary and other methods of dealing with the liquor question have been purely as a matter of fact questions of local regulation. No such system has ever prevailed when the locality did not demand it.

MR. MALONE—It is the election of the officers we are trying to get at.

MR. WALKER—The election of the officers and all of the details, everything, if you establish by an act of the Legislature in any county in Alabama, a dispensary, unless it is satisfactory to the county in which it is established they will, at the next session of the Legislature proceed to legislate upon it locally by electing a member of the Legislature who will come down here and pass a bill through disposing of it. It is practically nothing

in the world but local legislation, and you cannot make it anything else. The mind of the Legislature does not come in contact with these questions so far as they effect localities, but it is left entirely in the hands of the local member. As it has been demonstrated, it has been purely and simply a local question, and the Legislature has been made simply the mouthpiece of the different localities, and this prohibition, special laws, with reference to this matter would simply relegate this matter to the community where it really belonged, and not leave the Legislature any longer the mouthpiece of the particular community.

THE PRESIDENT—The time of the gentleman has expired.

MR. HARRISON—I move that the time of the gentleman from Madison be extended.

MR. WALKER—I thank the Convention, but I will be content with my ten minutes. I have about finished my remarks.

Mr. Boone offered an amendment as follows:

Amend the amendment by adding the following words: "nor to abrogate any special privilege now existing in any county, city or town by charter or statute."

MR. PETTUS—I move to lay that amendment on the table.

MR. WATTS—It has been explained two or three times that Section 4 of this report proposes to deal with these local matters in no other way than through the Legislature; and I simply call attention to that again that it may be noticed as we go along; and I move to lay the amendment of the gentleman on the table.

MR. deGRAFFENREID—And on that I call for the ayes and noes.

On a vote being taken, the call was not sustained.

On the motion to table, a division was called for, which resulted in 54 ayes and 53 noes; and the motion to table was carried:

MR. O'NEAL — I move the previous question on the subdivision.

MR. REESE—I move to table the subdivision.

MR. O'NEAL—You can't do that. I have moved the previous question. We have voted on that very proposition, and, by a vote of 73 to 38, it was defeated.

MR. CUNNINGHAM—I make the point of order that intervening business has occurred since the motion to table.

THE PRESIDENT—In the opinion of the chair, the point of order is well taken. The point of order is to table Sub-division 14.

MR. CUNNINGHAM—I call for the ayes and noes.

MR. HARRISON—I call the gentleman's attention to the fact that that same motion has been made and voted on.

MR. BROWNE—I make the point of order that the point of order made that other business had intervened has no effect upon it, and does not apply to make a motion to lay anything upon the table the second time. That only applies to motions for adjournment.

MR. REESE—I move that the section be indefinitely postponed.

THE PRESIDENT—In the opinion of the chair, the motion to table will not now be in order. It was the first impression of the chair, when the gentleman made his point of order, that it was well taken; but upon consideration, it seems to the chair that it is not well taken; and the chair will overrule the point of order. The question will be upon the previous question, which has precedence over the motion to indefinitely postpone. The question is, shall the main question be put?

On a vote being taken, a division was called for.

THE PRESIDENT—Ayes, 60, and noes, 49; and the previous question is ordered. The question now is upon the adoption of the sub-division.

MR. ROGERS—And on that the ayes and noes are called for.

The call was sustained, and upon the call of the roll the vote resulted as follows:

#### AYES

Almon,	Grayson,	Macdonald,
Barefield,	Greer, of Calhoun,	Miller (Wilcox),
Bartlett,	Haley,	Oates,
Browne,	Harrison,	O'Neal (Lauderdale),
Byars,	Hinson,	Palmer,
Carnathon,	Hood,	Phillips,
Chapman,	Inge,	Porter,
Cofer,	Jackson,	Renfro,
Cornwall,	Jenkins,	Reynolds, of Henry,
Craig,	Jones, of Bibb,	Robinson,
Davis, of DeKalb,	Jones, of Hale,	Sanders,
Davis, of Etowah,	Kyle,	Sanford,
Fletcher,	Leigh,	Searcy,
Glover,	Long, of Butler,	Selheimer,
Graham, of Montgomery,	Long, of Walker,	Sloan,
Grant,	Lowe, of Lawrence,	Smith, Mac. A.,

Spragins,  
Waddell,

Walker,  
Watts,

Whiteside,  
Williams (Marengo),

TOTAL—54

### NOES

Messrs. **President**,  
Ashcraft,  
Banks,  
Beavers,  
Beddow,  
Bethune,  
Blackwell,  
Boone,  
Brooks,  
Bulger,  
Burns,  
Carmichael, of Colbert,  
Case,  
Cobb,  
Coleman, of Greene,  
**Cunningham**,  
Dent,  
deGraffenreid,  
Duke,  
Eley,  
Eyster,  
Espy,

Fitts,  
Foshee,  
Graham, of Talladega,  
Greer, of Perry,  
Heflin, of Chambers,  
Heflin, of Randolph,  
Howell,  
Howze,  
Jones, of Montgomery,  
Jones, of Wilcox,  
Kirk,  
Kirkland,  
Knight,  
Ledbetter,  
Lowe, of Jefferson,  
McMillan (**Wilcox**),  
Malone,  
Martin,  
Maxwell,  
Merrill,  
Murphree,  
Norman,

Norwood,  
Parker (Cullman),  
Parker (Elmore),  
Pearce,  
Pettus,  
Pillans,  
Pitts,  
Reese,  
Rogers (Lowndes),  
Rogers (Sumter),  
Samford,  
Sentell,  
Smith (Mobile),  
Smith Morgan M.,  
Stewart,  
Thompson,  
Vaughan,  
White,  
Williams (Barbour),  
Williams (Elmore).

TOTAL—64

### ABSENT OR NOT VOTING

Altman,  
Burnett,  
Cardon,  
Carmichael, of Coffee,  
Coleman, of Walker,  
Ferguson,  
Foster,  
Freeman,  
Gilmore,  
Handley,  
Henderson,  
Hodges,

King,  
Locklin,  
Lomax,  
McMillan, of Baldwin,  
Miller (Marengo),  
Moody,  
Morrisette,  
Mulkey,  
NeSmith,  
O'Neill, of Jefferson,  
Opp,  
O'Rear,  
Proctor,

Reynolds (Chilton),  
Sollie,  
Sorrell,  
Spears,  
Stoddard,  
Tayloe,  
Weakley,  
Weatherly,  
Willet,  
Wilson (Clarke),  
Wilson (Washington),  
Winn,

The clerk then read sub-division 15, as follows:

“Fifteenth—Fixing the punishment of crime or misdemeanors.”



MR. WALKER—I offer an amendment to that sub-division. The clerk then read the amendment as follows:

“Amend by striking out the words ‘or misdemeanors.’”

MR. O’NEAL—I desire to state, on behalf of the Committee, that we accept the amendment offered by the gentleman from Madison (Mr. Walker).

MR. deGRAFFENREID—I want to ask the Committee for information. As I understand it, the Convention has indicated by a vote that it does not propose to interfere with the power of the General Assembly to pass local laws with reference to liquor, and if so, there will have to be penalties attached for the intraction of such laws.

THE PRESIDENT—The question is on the amendment offered by the gentleman from Madison to strike out the words “or misdemeanors” at the end of the line. Upon a vote being taken the amendment was adopted.

MR. CARMICHAEL (Colbert)—I now move to strike out subdivision 15.

Upon a vote being taken the motion was lost.

MR. O’NEAL—I move the adoption of the subdivision as amended.

And the same was adopted.

The clerk then read subdivision 16 as follows:

“16. Providing for or regulating either the assessment or collection of taxes.”

MR. SMITH—I desire to offer an amendment to subdivision 16.

The Clerk read amendment to subdivision 16 as follows:

“Amend subdivision 16 of Section 1 of the report of the Committee on Local Legislation.

First, by substituting a comma at the end of the subdivision for the semi-colon now there.

“Second by adding at the end of the subdivision the following, viz: ‘Except in connection with the readjustment, renewal or extension of existing municipal indebtedness created prior to the adoption of the Constitution of 1875.’”

MR. O’NEAL—I desire on behalf of the Committee to accept the amendment offered by the gentleman from Mobile (Mr. Smith).

MR. SMITH (Mobile)—I desire to state the purpose of the amendment. Prior to the Constitution of 1875 the city of Mobile was indebted in a very large sum of money, and for the purpose of compromising that indebtedness with her creditors, there was an adjustment act passed by which it was provided that three-quarters of one percent special tax should be allowed to that city, and it was stipulated in that settlement and adjustment that three-quarters of one per cent should be devoted exclusively to the payment of that indebtedness. The compromise was made upon that basis and there has been a special system for the collection of that particular tax since that time, and it goes into the hands of the trustee for the benefit of the creditors of the city of Mobile. That indebtedness will mature in 1906, I believe, when it will have to be readjusted, and it may be, and probably will be, that in order to do this upon anything like an advantageous basis, it will be necessary to continue that special system, that the city is now under. For that reason I do not desire that that section should affect that particular indebtedness, or that particular system for the collection of this tax. As it reads it says providing for or regulating either the assessment or collection of taxes. In the readjustment of that indebtedness it would be necessary for the new act to provide, as the old act, and as the contract with the creditors provides, for a machinery whereby there may be a special system for the collection of the tax different from any other in the State of Alabama. I do not know whether there were any other indebtednesses at that time applicable to other municipal corporations or not. But I think there ought to be an exception made to the city of Mobile.

MR. KIRK—What is the scope and purpose of this subdivision?

MR. O'NEAL—The purpose has been stated clearly by Mr. Smith. If the gentleman had listened he would have known. It is to prevent interfering with debts which existed at the time of the ratification of the Constitution of 1875.

MR. KIRK—What is the purpose of the subdivision as reported by your Committee?

MR. O'NEAL—It is to prevent passing a law for one particular section different from that of another. In other words, you cannot pass a law for Florence different from any other town or city. It prohibits the legislature from passing a law, special or private, which will apply to one particular locality different from other localities in reference to the collection and assessment of taxes.

MR. ASHCRAFT—Are there any special laws now relating to the assessment and collection of taxes?

MR. O'NEAL.—I don't know of any special laws now; but we want to prevent them in future. If there are any special laws they are not affected by this provision.

MR. SAMFORD.—I will state that there are some special laws and they ought to be repealed.

MR. O'NEAL. The idea is this: When a man wants to ascertain in regard to the assessment and collection of the taxes the same law prevails throughout the State. We don't want to have a mass of confusing laws in every locality, one different from the other.

MR. FOSTER Does this affect the regulation of the assessment or collection of any special tax authorized by the legislature? I say does it prevent the legislature from authorizing the levy of any special tax? For instance: Your town is authorized to levy three-quarters of 1 per cent., instead of one-half of 1 per cent.?

MR. O'NEAL.—It don't apply to cases of that kind. It provides for the assessment and collection of taxes. In other words, it must be uniform throughout the State.

The Chair here informed the gentleman that his time had expired.

MR. PARKER (Cullman)—I move the previous question on the subdivision and the amendment.

MR. FOSTER—I hope the gentleman will withdraw that until I can offer a short amendment.

MR. CUNNINGHAM—While the gentleman is preparing his amendment, I desire to ask the Chairman of the Committee a question.

MR. O'NEAL—Certainly.

MR. CUNNINGHAM—I simply ask the question for information. I understand the time for assessing taxes for Jefferson County shall be the same as for Winston County?

MR. O'NEAL.—It is now.

MR. CUNNINGHAM—And limit it as to when it shall be completed?

MR. O'NEAL—No, the General Assembly can pass a law allowing a time in which they can be assessed in all the towns and cities in the State and do do it.

MR. CUNNINGHAM—I was going to say that in the larger counties there would have to be more time, or there would be an assessment fee upon the people of 50 cents.

MR. O'NEAL—Different laws applicable to different towns and in larger cities.

The Clerk then read the amendment as follows:

“An amendment to an amendment by Mr. Foster to subdivision 16: Amending by striking out the words ‘providing for or.’”

MR. FOSTER—That is to prevent any possibility of a construction of that subdivision which would prevent the Legislature from authorizing the collection of any special tax which might be authorized by this Constitution or by the laws of the Legislature.

THE CHAIR—The question is on the amendment to an amendment offered by the gentleman from Tuscaloosa.

MR. REESE—I hope the Convention will adopt the amendment offered by the gentleman from Mobile (Mr. Smith.) That provides that the Legislature can pass a special law regulating the collection of taxes in certain cases of a debt made prior to 1875. The city that I represent has a debt of about \$325,000 created prior to that time. There is a special act that regulates and guarantees the collection of taxes for the payment of interest upon these bonds and there is a sinking fund to redeem the bonds. When the time has expired—when these bonds mature, it will be necessary, in order to refund these bonds at a fair price and under favorable conditions to our city, that there be such another law passed as the one under which the taxes are now being collected to pay this debt. I hope the Convention will embrace the few cities that will be exempted by the provisions of the amendment offered by the gentleman from Mobile.

MR. KIRK—I move to lay the subdivision and the amendments on the table.

MR. O'NEAL—I call for an aye and nay vote on that.

The call was not sustained. Upon a vote being taken upon the motion to table the amendments and sub-division, a division was called for, and, by a vote of 33 ayes and 54 noes, the motion to table was lost.

MR. O'NEAL—I move the previous question on that subdivision, 16, and the amendments.

The main question was ordered, and a reading of the amendment called for.

The amendment by Mr. Foster was read. Upon a vote being taken, a division was called for, and, by a vote of 49 ayes and 38 noes, the amendment was adopted.

THE PRESIDENT—The question recurs upon the amendment offered by the gentleman from Mobile, as amended by the amendment of the gentleman from Tuscaloosa.

Upon a vote being taken, the amendment was adopted, and upon a further vote, Sub-division 16, as amended, was thereupon adopted.

Sub-division 17 was read as follows:

Seventeenth—Giving effect to invalid will, deed or other instrument.

MR. O'NEAL—I desire to amend that sub-division by adding the word "an"—giving effect to "an" invalid deed.

There being no objection, the amendment was allowed, and, upon a vote being taken, the sub-division was adopted.

Sub-division 18 was read as follows:

Eighteenth—Legalizing the invalid act of any officer.

MR. JONES (Montgomery)—I have an amendment.

The amendment was read as follows:

Amend Section 1 by striking out the 18th sub-division.

MR. JONES (Montgomery)—My reason for offering that is that there are cases where the Legislature ought to have the right to validate the invalid act of an officer, and not have to put it in the general law. I will recall one of two instances to illustrate the impropriety of that provision. In 1892 the Legislature spent about \$15,000 more than the appropriations. The Treasurer and Auditor, however, realizing that it was an honest debt, and that the State would have to pay it, paid the debt, and afterwards the Legislature was asked to ratify that invalid act. Now it did that by what was called a special act. I recall another instance where a State Board of Assessors of Railroads, by some accident, met at the wrong time, and we got a special act legalizing the invalid act of those officers. Now you have a revenue law declared invalid now and then, there might be an assessment or some part of some act of some officer that was perfectly invalid and illegal in itself that the Legislature might want to make valid. Then another objection is that you do not want to pass general laws legalizing invalid acts. The Legislature wants to be the judge and jury of each particular case. It might put a premium upon the commission of illegal acts, if you pass a general law in advance, provided that those acts and all others like it may be validated, and that is the reason I think no useful purpose can be obtained by putting that in the Constitution. We do not have a great deal of that anyhow.

MR. MACDONALD—It is not very often that I impose upon the patience of this Convention, but it occurs to me that the suggestion made by the delegate, Mr. Jones, is fraught with great danger. The duties of officers are pointed out in the law, and it is their absolute duty to follow the path that the law prescribes.

MR. JONES (Montgomery)—Does not the gentleman think it would be better, if it is done at all, that in each special case there should be a special act, rather than a general law upon the subject?

MR. MACDONALD—No, sir; I do not. I do not think any officer should be allowed to violate the law with the idea that afterward the Legislature can come along and validate his acts. It holds out a reward to men to do that which is not in the line of their duty. It is a dangerous thing. It is fraught with very grave consequences, to say that an officer who does an unlawful act, may depart from his duty, and then go to the Legislature and appeal to them and to their sympathy, or upon any other ground, get them to ratify that act and put it in his power to again violate the law, and for others to violate the law with the hope of having their conduct ratified.

MR. REESE—How many acts have the Legislature validated in the last twenty years?

MR. MACDONALD—I have not the slightest idea. I am speaking about the principle.

MR. JONES (Montgomery)—There are only ten or twelve that I know of.

MR. MACDONALD—If it is only one it don't do.

MR. JONES (Montgomery)—This provision requires you if you want to validate an act to do it by a general law instead of having a special law in each particular case where they want to do it.

MR. MACDONALD—Yes, sir; and I question the wisdom of doing it. Either to do it by a general or a special law, but especially by a special law, because I say the man who violates his duty, and then afterwards appeals to the Legislature to validate that act, brings to bear upon the Legislature influences of sympathy, which is improper, and it seems to me that no better rule could be laid down for public officers than to strictly follow the path pointed out to them by the law, and not to permit them to speculate upon the idea that any Legislature could say whether or no they did wisely. They had better keep in the middle of the road than to have any such provision as that in the fundamental law of the State.

MR. COBB—It must strike the mind of any fair-minded individual that there are two propositions that ought to be considered in connection with this motion to strike out this section. One is that it is not prudent to pass a general law providing for the validating of illegal acts. To do that would be extending an invitation to officers to act illegally. That we do not wish to do. The other proposition is that it must be clear to the mind of the prudent thinking man that there are occasions which may happen, when it is right and proper to make valid the act of an officer which when it was committed was invalid.

I will not detain this Convention by attempting to illustrate the proposition. It will suggest itself to any thinking man. Now, as suggested by my friend from Dallas, this appeal to the Legislature rarely occurs. The Legislature of Alabama is never called upon to validate the illegal act of an officer, unless that illegal act was performed under circumstances which made it justifiable in a sense. Illegal it may be, technically, or under some extreme circumstances, when in the performance of a high duty, a duty to the public and to the State, he took the responsibility of violating the law or acting without the law. When that sort of condition is presented to the Legislature, why should not they, representing the majesty of the State, relieve him from the consequences of his act, when it is clearly shown that it was done out of the highest motives and for the purest interests of the public. I think the subdivisions ought to go out.

MR. O'NEAL—I do not think this Section should be stricken out. It seems to me, as the gentleman from Montgomery has just suggested, it would encourage officers to violate the law with the hope that they could apply to the Legislature, and through local influence, and other agencies which are generally brought to bear upon a local member, secure the authorization of an illegal act. Now this provision is found in the constitutions of nearly all of the States. Some States have an exception which I will call attention to "legalizing as except against the State, the unauthorized or invalid act of any officer" that exception might be incorporated, but the Section as a whole should not be stricken out because it works a good purpose. If an officer violates the law, he has done wrong to somebody. Why should the Legislature put a premium upon the officers violating the law in this State. Why should the Legislature say to an officer if you violate your duty, violate the plain laws of the land, come to us and we will give you the relief from your unauthorized and illegal acts. I can see no justice in such a proposition. In an exceptional case of course it can be provided by a general law, and it is proper to provide for it by a general law, because the minute you permit special and local laws on the subject you invite all the evils which special and local laws create. You make the local member the arbiter and not the General Assembly.

MR. WHITE—How could you by a general law provide for a particular act?

MR. O'NEAL—If it ought to be done, it can be provided for. If it ought not to be done by general law it ought not to be done by a special law.

MR. WHITE—How can you do it by a general law?

MR. O'NEAL—The same as by a special law.

MR. WHITE—For a particular act?

MR. O'NEAL—Yes, for a particular act. You can apply a general law to all persons of a general class doing certain invalid acts. If a Treasurer, for instance, pays money by mistake, you can pass a law which provides that whenever the Treasurer does so and so—

MR. WHITE—But suppose the Tax Assessor of one county were to make a wrong assessment, how could you provide by a general law for that?

MR. O'NEAL—Why, you can certainly pass a general law that whenever a Tax Assessor makes a wrong assessment that the money shall be refunded by the Probate Judge and that would be a general law.

MR. WHITE—That encourages them more than the other, don't it?

MR. O'NEAL—That would leave it to the Legislature acting as a whole. With a general law, you get rid of the danger of the local influence. We know under that system now prevailing when a member goes to the Legislature and asks for the passage of a local bill validating the act of an officer, the Legislature as a whole accepts the wishes of the local member, but when you require the whole Legislature to pass upon the question they will scrutinize and examine it carefully and they won't give their sanction to the act unless it is such as appeals to their sense of justice sitting as legislators for the whole State.

MR. BEDDOW—I would like to ask the gentleman if this very Section, in the last line of the Section, don't provide that the Legislature can pass general laws covering all these cases?

MR. O'NEAL—Certainly it does, and I thank you for the suggestion, we simply say that these amendments are continually proposed, you destroy the very purpose of this Article. The Article is to prevent local legislation for certain enumerated subjects, and it directs and commands the Legislature to pass general laws on those subjects. You can pass general laws then to legalize such acts of an officer as are invalid in the judgment of the Legislature, and should be legalized.



If this amendment is adopted striking out this Section, you may as well strike out the other sections of the Article. The whole argument here that has been made in favor of all these amendments, is on the ground that it might cause some hardship to some officer, county, or individual. That argument can be made for every local or special law, ever proposed in a Legislature. We answer that argument by saying that the Legislature can now provide by general law, and will provide by general law for these things, and this will present the corruption, the jobbery and log-rolling, the intrigue that exists in every General Assembly of this State, and will continue to exist as long as there is no restriction upon local and private legislation. We do not want to trust these matters to the local member. Now he is a Czar. He has dictatorial powers about every matter of legislation that affects his county. The Legislature of Alabama is the member from that one county, so far as local matters are concerned. Custom and usage make it so. We want to overcome that and we cannot overcome it unless we say to the Legislature on all these subjects you must pass general laws. Then you have the concurrent wisdom of the entire Legislature. All of their judgments, all of their views are brought to bear upon the particular subject, instead of the judgment and view of one particular man.

MR. WILLIAMS—Do you propose to pass that general law before the act or after the act. Do you propose to make the law general, so as to apply to acts or mistakes which are to be made in the future, or after the mistake is made, do you then propose to pass a general law so as to apply in that case?

MR. O'NEAL—Why, of course, if occasion should arise in a Legislature, if a case should occur in which an officer had performed an invalid act, done it in good faith and no harm had come to the State, the Legislature in order to give him relief, instead of passing a special law, would pass a general law, which would embrace him and all others under like circumstances. Who can object to that. The distinguished gentleman from Montgomery said that you ought not to pass general laws. I say if you do not pass a general law in legalizing an invalid act, then you should not pass a special law. Is it to be contended that the Legislature ought to pass a law which is local and vicious in its nature, if they ought not to do that, as to a general law, they ought not to do it as to a local law. I submit whenever a case does occur, under this Article the Legislature has full power to provide a general law, for the circumstances of that particular case, and they can give the necessary and required relief.

MR. JONES (Montgomery)—I do not wish to detain the Convention. I do not think the Committee ought to take that position, because some of us differ with them as to particular sections, that we are destroying the whole report and trying to break down

all the efforts at reform in matters of local legislation. That has not been the purpose I am sure of those of us who have differed with the Committee.

MR. O'NEAL—If the gentleman will allow an interruption, I desire to state that I made that as a general remark and that it had no personal application, I am sure that the gentleman was actuated by the highest motives in what he did. I do not question it in the least.

MR. JONES—I submit it is bad policy to lay down in advance where officers fail to do their duty, the method by which their act will be validated. It might be wise for the General Assembly to say to the Board of Railroad Assessment, you met at the wrong time last year, and you brought the facts before me and in that particular case I ratified your acts, but it is different for an officer to know that there is something laid down in advance which says that he can break the law, and that he does not act at his peril. I want to illustrate why a general law would not do any good. We had a revenue law which was declared unconstitutional some time ago. An officer of the law in the utmost good faith levied on certain property. The levy was all right under the statute as it was. The Supreme Court declared it unconstitutional. A client of mine wanted to sue for trespass and I said no, that is wrong, he is doing his duty. The Legislature is going to pay that thing back, but if there are many suits of this sort brought the Legislature will ratify the tax and make it go backwards.

MR. WATTS—Did not the Tax Collector of Dallas county come up here and go to the Legislature two years ago to pass a law relieving him from a misappropriation of the public fund, and did not the Legislature pass a law giving him that relief, and the act was vetoed by Governor Johnson?

MR. REESE—I would like to ask the gentleman the name of that tax collector?

MR. WATTS—I am informed that the Tax Collector of Dallas county deposited certain State funds in the Commercial Bank which was, under a Supreme Court decision, a conversion, and that the Legislature passed an act relieving him from liability for it.

MR. REESE—Was not that Wilcox county?

MR. WATTS—I don't recollect, but I think it was Dallas.

MR. JONES—I submit that I have the floor. There has been no great evil in this matter. I don't know of a case of that sort unless it had abundant merit in it, that was not buried overwhelmingly in the Legislature, either on the direct passage of the law, or on the Governor's veto, but the Legislature represents the sovereign power of a sovereign State and it ought to have some power

to pass upon this question, and the whole question is if you are going to put a matter of this sort in its hands and say that it shall not act except by a general law.

The question being upon the adoption of the amendment, by a vote of 74 ayes to 26 noes the amendment was adopted.

Subdivision 19 was read.

MR. SMITH (Mobile)—I desire to offer an amendment.

The amendment was read.

Amend subdivision 19 of Section 1 of the report of the Committee on Local Legislation, the following, viz: "except in connection with the readjustment, renewal or extension of the existing municipal indebtedness, created prior to the Constitution of 1875.

MR. O'NEAL—I am instructed by the committee to say that we accept that amendment.

MR. MALONE—It looks to me like this whole question has been settled by the Committee on Taxation and Municipal Corporation and I therefore move that this subdivision be stricken out.

MR. SMITH (Mobile)—I want to state that the purpose is simply the same as my amendment to Section 16.

THE PRESIDENT—The pending question is the amendment offered by the gentleman from Mobile.

MR. MALONE—My motion is to strike out the whole thing.

THE PRESIDENT—You cannot strike out the amendment because it has not been adopted.

MR. MALONE—Then I move to table it.

MR. O'NEAL—I hope the gentleman will give an opportunity to discuss this matter. It is one of the most important matters in the report.

MR. LOWE (Jefferson)—I rise to call attention to the fact that it will be practically impossible to dispose advantageously of municipal bonds without the sanction of the General Assembly in each specific case. It seems to me that that should not be a question of general legislation nor should it be a question of obnoxious special legislation. Municipal governments are part of the State government and it is the duty of the General Assembly to look after them. That is one of the highest duties of the General Assembly. We know that when we come to issue bonds, it is not only necessary to have the authority to issue them, but it is necessary to have the authority to do so in such a manner as to make them attractive to investors. Bond buyers in this country are a class, which always reserves the right to dictate the terms and

conditions under which they will purchase. It is an advantage to a city that its securities be in such shape that they will bring the highest price upon the market. That is axiomatic. I believe that the General Assembly ought to be allowed the power specifically to authorize each and every issue of bonds by municipalities. I believe it would increase the price at which the bonds could be sold. It will give additional security to require the sanction of the General Assembly in every particular case. The matter has already been safeguarded by the adoption of the report of the Committee on Taxation.

MR. O'NEAL—Will you please state what that provision is. It has escaped my recollection.

MR. LOWE (Jefferson)—It is the limitation upon the power of municipalities to issue bonds at any rate. I believe that this provision will simply interfere with the sales of the bonds, and if that should be so there is no reason whatever why the General Assembly should not be allowed and required specifically to authorize the issue of bonds in each case. It seems to me that it would be extremely difficult to frame a general law to give that sanction and security which the purchasers and dealers in bonds of this character would naturally expect before they put their money into it.

It has consumed much of the time of the General Assembly, but they should not be permitted to issue any bonds at all except that it is by the sanction of the General Assembly for a specific purpose and I think that this section should be laid upon the table.

MR. ESPY—One of the crying evils from which the people of Alabama were suffering before this Convention was called, was the excess of local legislation. It has been announced time and again upon this floor, that it was next to the suffrage question as one of the most important questions that could possibly come before this body, and yet when the report of the Committee on Local Legislation is here for adoption, it seems that a majority of the delegates here are determined that the privilege of local legislation shall not in any particular be cut off or reduced. This has furnished in the past the most prolific source of local legislation. Town after town desires to issue a new series of bonds. They come to the legislature and they make their application. Their cause is a just one and the result is that the entire session of the legislature, or nearly all of the session of the legislature is devoted to local legislation. Now what can be the possible objection to enacting a law for the State of Alabama authorizing every township, every city, every subdivision of the State, to issue bonds and that kind of a law would certainly make the bond as valid as if it were enacted by a special law, or by a special enactment of the General Assembly. It would be just as valid. The bond would sell just as readily. It would bring just as good a price as if they were issued

under a special act. Another remarkable thing I find that gentlemen here who have been praising past legislatures and saying that they have all the virtues of the whole country embodied in them, are now afraid to risk the legislature for anything. Some gentlemen ask the question when the subdivisions are presented for adoption, suppose the legislature should not enact a general law. Certainly, Mr. President, legislatures of the future will be as good men and can be trusted as far as the legislatures in the past, and at the rate we are proceeding here we might just as well wipe out this report and not try to incorporate it into the Constitution at all, because everything here which has been a source of prolific legislation in the past, is stricken out by this Convention just as soon as they heard it read. I do hope that the Convention will not strike out this particular subdivision but that they will adopt it with proper amendment.

MR. WATTS—The object of the including of this provision in this report is not on account of the issue of bonds by any town or city, but simply to keep the legislature from taking the public time in passing a special law in each particular case. The legislature of 1896-7 passed eleven of those acts, and the legislature of 1898-9 passed 43, and the last legislature, I am informed, passed about twice that many. We understand that the Committee on Municipal Corporations has presented a report here which requires the legislature to divide the cities and towns of this State into classes and to prescribe the powers of each class. Necessarily the legislature will prescribe what powers each class has to issue bonds and will provide that each class, if it has an indebtedness now can issue bond for the renewal law passed as recommended by the Committee on Municipal Corporations, will give any city or town in this State that has the right to issue bonds, or which may have a right in the future to issue bonds, or as great a right and as sacred a right to issue them as a special act could in each instance. Furthermore, this general law which would provide the issue of bonds by municipalities, might prescribe the time those bonds should run, in which amount they should be issued, what rate of interest they should bear, and what conditions they should have prescribed, generally, for the issue of bonds just as well as they could if each particular locality, and then each city and town in the State will know and every bond-buyer will know the conditions which apply to the issue of bonds in our State and they will not be required to look into the provisions of the special acts passed for special cities.

MR. LOWE (Jefferson)—The gentleman says that generally the cities will derive the same benefit under a general law that they will under a special law. To illustrate the difficulties which are in the way I will ask the gentleman to state how he expects by such a law to regulate the rate of interest. One municipality may borrow money at a considerably lower rate of interest than another.

MR. WATTS—They can determine that by providing in the general law that the bonds issued by the municipalities at such a rate of interest as the local authorities may determine.

MR. LOWE (Jefferson)—You want to throw the whole responsibility, then, of issuing the bonds upon the local authorities, and you will not come to the General Assembly, but you want all of that authority to be stated in the general law?

MR. WHITE—The general law will provide the machinery by which the bonds will be issued.

MR. LOWE—You cannot designate the amount of the bond, you cannot provide whether it will be a gold bond or whether they shall issue a currency bond.

MR. WHITE—The object of the Committee is to make all bonds issued by municipalities in the State upon practically the same terms and conditions.

MR. LOWE—You want to fix the Constitution so that every municipality in the State of Alabama must issue bonds on the same conditions, under the same terms, regardless of what the purchaser wants, or what the city may design.

MR. WATTS—No, but that they shall issue them in accordance with the general law enacted applying to the different localities.

MR. LONG (Walker)—Is it not a fact that the school bonds in some localities had a mortgage upon the school building, in order that the bonds may be placed, therefore, would all school bonds in the State have to be issued on the same basis?

MR. WATTS—I do not know of any city that has been so unfortunate as to issue bonds that way.

MR. LONG (Walker)—Is it not a fact that bond buyers usually want and nearly always want a special act passed, regulating the issue of a certain class of bonds?

MR. WATTS—I do not think we are legislating especially for the bond buyers, but that we are legislating specially for the interests of the people of Alabama.

MR. LONG (Walker)—Is not the interests of the people of Alabama in the best price that you can get for these bonds?

MR. WATTS—Yes, I think so.

MR. LONG (Walker)—Do you think that a little town out here can borrow money on bonds as cheap as the city of Montgomery?

MR. WATTS—In proportion to its revenue, yes.

MR. O'NEAL—One of the greatest evils in Alabama has been the unlimited issue of bonds by the counties and municipalities of this State. If you take the record of the last few Legislatures you will find that over eight millions of indebtedness has been created. The result has been that the people of Alabama have demanded that the power of the Legislature to issue these bonds shall be curtailed. They have demanded that before any city or town in Alabama, or county, shall have the privilege of issuing bonds, that the question shall be submitted to a vote of that particular locality that may be affected. Then if a law of that kind is passed and it has been reported by the Committee on Municipal Corporations, a general law will be passed on the subject, requiring every city, county and town in Alabama before they issue a bond, to submit the question to a vote of the people to the particular locality that will be affected.

The Legislature will pass a law prescribing the terms in the bonds. They can provide that the rate of interest at which the bonds shall be issued, shall be determined by an ordinance of the particular town or city affected. They can provide that when the bond issue is authorized, that fact can be certified to the Secretary of State by the Mayor or Probate Judge, and what more evidence would a bond buyer want than that certificate? You have that certificate to show the election of a Governor. You have it to show the election of every official in this State, and why should we go to the bondholder or to the bond-buyer with more evidence than we give upon the election of the most important officials in this State?

Now I say if you strike out this provision you leave it in the power of the Legislature to authorize the issuance of bonds, in any town, city or county in the State, absolutely without restriction or limitation. You allow the local member to come to Montgomery and without consulting his constituents, without seeking to know their wishes in regard to the issuance of bonds, he secures the issuance of bonds in any amount that may suit his pleasure and the people are without remedy.

MR. LONG (Walker)—Is it not a fact that a limitation was placed upon the power of counties and municipalities to issue bonds in one of the other reports?

MR. O'NEAL—It is not a fact, as I understand it. There was nothing in the report of the Committee on Taxation on this subject which has ever been adopted by this Convention. There is only a limitation in the report of the Committee on Taxation, that no city or town shall exceed 7 per cent of the assessed value of its property and there is a limitation upon the rate of taxation, but there has been no limitation upon the power otherwise.

MR. BOONE—I read to you from the report of the Committee on Municipal Corporations.

Sec. 7. No county, city, town, village, district or other political subdivision of a county shall have authority or be authorized by the General Assembly after the ratification of this Constitution to issue bonds, unless such issue of bonds shall have first been approved by majority vote by ballot of the qualified voters of such county, city, town, village, district, or other political sub-division of a county voting upon such proposition. In determining the result of any election held for this purpose, no vote shall be counted as an affirmative vote which does not show on its face that such vote was cast in approval of such issue of bonds.

MR. O'NEAL—It occurs to me if the gentleman had been giving proper attention to the proceedings, the gentleman would have known that that section had not been adopted.

MR. BOONE—I know that very well, sir. I think I have given as much attention to the proceedings as you have. I said that it had been reported by the Committee on Municipal Corporations for the favorable action of the Convention.

MR. O'NEAL—I understood the gentleman to say that it had been adopted.

MR. BOONE—I did not. I said that it had been introduced by the gentleman from Greene and reported by the committee.

MR. O'NEAL—It seems to me if it has been reported by the committee, the gentleman is a very wise man to know that this Convention will adopt the report of the committee.

The clock here struck the hour of 6 and the Convention thereupon adjourned until tomorrow morning.

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## FORTY-FIRST DAY

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MONTGOMERY, ALA.,

Wednesday, July 10, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer, by the Rev. Mr. A. F. Dix as follows:

Our Father and our Lord it becometh us to approach Thy presence with reverence for Thy majesty, and with awe for Thy holiness in Thy government. It becometh us also to approach Thee with confession, for our own consciences tell us of sin, but



we thank Thee that we may approach Thee with confidence that Thou hast provided the means whereby Thou canst forgive sin and accept the presence of those who have transgressed Thy laws, if they rely upon the merits and advocacy of Him whom Thou hast sent forth. Look upon us this morning in our needs we pray Thee and confer upon us such graces as are requisite for the discharge of our duties, before God and the world. Do Thou bless this convention in all its membership. Do Thou confer upon Thy servant, the President of this body, the wisdom requisite that his rulings may be right, and upon all the members that zeal for good which can meet the divine approval, and may Thy wisdom be conferred upon them, and may they be enabled so to discern the future and its needs and the wants of the people for whom they are framing fundamental law and do Thou enable them to adjust measures that the growth of our great State may be accommodated, that the development of its industries may be encouraged, that the people may grow in righteousness and in the qualifications of good citizenship, that our future laws may be such as shall be commended to human conscience and to divine judgment. We ask now our Father in behalf of all the interests of these men, help them we pray Thee to discharge the varied duties that rest upon them as citizens and as standard bearers in the respective communities, and may all the interests of the rising generation be subserved and may the interests of Thy kingdom, O Lord, our Father, be enhanced for Thy name's sake, Amen.

Upon the call of the roll, 122 delegates responded to their names.

The report of the Committee on Journal was read, stating that the journal for the fortieth day of the Convention had been examined and found to be correct, and the report was adopted.

Leave of absence was granted to Mr. Jenkins of Wilcox for today and tomorrow.

MR. WILLIAMS (Elmore)—I move the reconsideration of the vote, Mr. President, by which sub-division 14 of section 1 of the report of the Committee on Local Legislation failed of adoption on yesterday, and I yield the floor to the gentleman from Lauderdale, Mr. O'Neal.

MR. deGRAFFENREID—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. deGRAFFENREID—My understanding is that the gentleman from Elmore voted against the adoption of the resolution.

MR. WILLIAMS—I voted on the winning side.

MR. deGRAFFENREID—My recollection was if he did not change his vote just before the vote was announced, that he voted against the adoption.

MR. PILLANS—He said that he voted on the winning side.

THE PRESIDENT—The gentleman's statement is sufficient.

MR. PILLANS—He voted on the winning side, and if he did he cannot make a motion to reconsider.

MR. O'NEAL—I simply desire to call the attention of the Convention to the effect of its vote on yesterday. Section 14 provides against any local legislation which grants any special or exclusive franchise whatever. By striking out that provision, without any amendment you say to the Legislature of Alabama that you can now grant a special franchise to any corporation in this State. You can grant a special franchise or exclusive franchise to a corporation to establish a street car system, electric light or water works. I am sure that was not the intention of the Convention. The idea seemed to prevail that the purpose of this subdivision was to prevent the City of Mobile from retaining the liquor license tax of the State, and the fear on the part of the advocates of the dispensary that it might prevent the establishment of dispensaries in cities and towns of this State. The Supreme Court has expressly decided in a recent decision that the right to create a dispensary is the right of a State to exercise police power in reference to the liquor traffic, and the right to confer upon a municipality or county the authority to establish a dispensary is merely the transfer of a part of the police power of the State to that particular county or locality. Now if the gentlemen are apprehensive that this provision will affect dispensaries, why cannot it be amended by providing that the Legislature shall not grant any special franchise to any corporation, and leave out city, town or county. Then you say to the people of Alabama in the future we do not intend that one of the great evils of local legislation consists in lobbies coming to the General Assembly, and by intrigue and log-rolling secure for a few favored individuals or corporations special privileges and immunities and franchises which they could not obtain under the general law. Now I am sure an amendment of that kind can be made to meet all the objections—

MR. SAMFORD (Pike)—Will the gentleman permit an inquiry?

If this section is reconsidered will the committee consent to the amendment suggested by the chairman of the committee?

MR. O'NEAL—They will.

MR. SAMFORD—That is all right.

MR. O'NEAL—But in the attitude we are in now, you say private corporations can secure any special privileges the Legislature may be willing to grant.

MR. O'NEAL—I have not finished my remarks. I retain the floor unless that is agreed to.

MR. ASHCRAFT—On yesterday I offered an amendment which limited this power to individuals, by the corporations and associations in accordance with the former action of the Convention. There was nobody on this floor more stoutly opposed to that amendment than you were. Are you willing to accept the amendment this morning?

MR. O'NEAL—I did oppose it, and I am still opposed to it, but I yield to the wishes of the Convention. As far as I am concerned I am opposed to a dispensary being established in any county until it is established by a vote of the people of the county or town.

MR. ASHCRAFT—I am satisfied the Convention will consent to a reconsideration if that amendment will be adopted.

MR. BOONE—Mr. President, under the present Constitution of Alabama, the Supreme Court of Alabama, in the case of the Birmingham Street Railroad in 79 Ala., expressly decided that the General Assembly—opinion by Justice Somerville—had not the power to grant to any corporation, individual or association an exclusive privilege or franchise, and the court based that decision upon—

MR. O'NEAL—Will the gentleman permit an interruption?

THE PRESIDENT—Does the gentleman yield?

MR. BOONE—Certainly.

MR. O'NEAL—My recollection is it prohibited the granting of an "exclusive" franchise, but did not hold that the Legislature could not grant a "special" franchise.

MR. BOONE—No, it held it could not grant an exclusive franchise.

MR. O'NEAL—In the slaughter house cases the Supreme Court of Illinois decided that a State, unless there was a prohibition on the power of the Legislature, could grant municipalities as it did in Illinois, for slaughter houses.

MR. BOONE—No question about that. The Supreme Court in the case of the Hamilton Gas Light & Coke Company, 146 U. S., held that the State could grant an exclusive privilege unless inhibited by the Constitution. My point is under the Bill of Rights, which we have adopted, there is an express provision which pro-

vides that no irrevocable or exclusive privilege or immunity should be granted by the General Assembly, and the latter part of Section 23 of the Bill of Rights provides that no special franchise or grant should be made which the Legislature did not have the power at any time to amend or revoke. Now, Mr. President, it seems to me that we are going too far to entirely exclude and prohibit the Legislature at any time in the development of this great State, from granting a privilege subject at all times to revocation, amendment or repeal by the Legislature? We cannot tell what the development may be in the State within the next fifty years, and what should be done to foster and encourage that development. Now I say we cannot grant an exclusive privilege even under the old Constitution, and it does seem to me to be going too far to say you cannot grant any special privilege because it might be necessary to grant for a temporary time a special privilege to do a certain thing.

MR. O'NEAL—I desire to ask the gentleman a question. I desire to call your attention to the exact language of the preamble which we have adopted. It says this: "That no ex post facto law, or any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the General Assembly; and every grant of a franchise, privilege or immunity, shall forever remain subject to revocation, alteration or amendment." Now that says making any irrevocable or exclusive grants of special privileges.

MR. BOONE—Yes.

MR. O'NEAL—It only prohibits the Legislature making a special privilege that is irrevocable or exclusive?

MR. BOONE—"Or"—it is disjunctively stated.

MR. O'NEAL—Granting special privileges that are irrevocable or exclusive, it does not prevent the Legislature from granting a special privilege that is not exclusive or irrevocable.

MR. BOONE—That is what I am arguing.

MR. KIRKLAND—I rise to a point of order. The gentleman from Lauderdale rose to ask a question, and instead of asking the question he is making a speech.

MR. O'NEAL—I am simply calling his attention to the preamble and asking a question.

MR. BOONE—I thought I was addressing myself to that very question, in favor of the retention by the General Assembly of the power to grant a special privilege provided it was not irrevocably granted, and provided further, it was not exclusive in its character.

THE PRESIDENT—Ruling on the point of order of the gentleman from Dale, the gentleman who is interrupted is the only person who can complain of the length of the interrogation.

MR. O'NEAL—I did not finish my interrogation.

MR. BOONE—I hope the gentleman will make his sentences as brief as possible, as I have only a short time to speak, if he will express them in a sentence or two.

MR. O'NEAL—We did not prohibit the General Assembly from granting the special privileges, we simply say you shall not grant a special privilege to one corporation in one locality which you do not grant to another.

MR. BOONE—Exactly. I think I understand the question. I say that is what we ought to allow the Legislature to retain. I have no patience with the seeming sentiment among delegates in this Convention that the whole wisdom and conscience and common sense of the State now and in times to come is embraced here on this floor, and that we will never at any time hereafter have in this hall men who have the interest of the State at heart. I believe, Mr. President, that at all times we will have men in both branches of the General Assembly who are as patriotic, who will have just as much learning, and who will do what they think is for the best interests of all the people. We cannot tell, what the development of fifty years will be, and it may be wise to do a certain thing in a certain county in this State it may be wise to have a dispensary there or some other thing, and no man can tell in this day and generation what ten years of innovations in the rapid thought for the good of humanity will bring forth, and so I say that we do not want to put bands upon the General Assembly and say that at no time must they do anything to develop the State. It may be there would be a great railroad to come through here, or some great business enterprise that operated in one or two counties, and the General Assembly might say we will give you a certain privilege, guarding the interests of the State and the citizens, for a short time, and safeguarding it in every way so that it would be highly beneficial to the State, but under the report of the Committee anything of that kind will be shut down, and I hope the reconsideration will not be adopted.

MR. HEFLIN (Chambers)—I call for the previous question on the motion to reconsider.

MR. ROGERS (Sumter)—Please withdraw that a moment.

MR. HEFLIN—I yield to the gentleman from Sumter on the understanding that he will move it afterwards.

MR. ROGERS—I will renew the motion for the previous question. I just want to say to the Convention, after mature consideration, because we thought there was a nigger in the wood-pile, we

decided to strike sub-division 14 from the report of the Committee on Local Legislation. Everything is granted to us under Section 23 of the report of the Committee on Preamble and Declaration of Rights that is necessary to prevent the granting of exclusive rights, therefore let us not now reconsider this motion, let us stand by our action on yesterday, because there is no necessity to reconsider the action by which this section was knocked out. And now I move the previous question upon this section.

A vote being taken the previous question was ordered and a further vote being taken the motion to reconsider was defeated by 59 noes to 47 ayes.

The next order of business was a call of the roll for the introduction of ordinances, resolutions, etc.

MR. ASHCRAFT—I desire to yield my call to the gentleman from Talladega, Mr. Graham.

Resolution No. 234 by Mr. Graham (Talladega.)

Resolved, That beginning with next Monday at 8:30, this Convention shall hold evening sessions each day from 8:30 to 10 o'clock.

Referred to Committee on Rules.

MR. GRAHAM—I am requested by the Committee on Education to ask leave to sit this morning during the morning session of the Convention, and I ask unanimous consent.

Leave was granted.

MR. SMITH (Mobile)—The Committee on Rules desires to report favorably on resolution No. 228, by Mr. White.

The Secretary read the resolution as follows:

Resolved, That the President of this Convention appoint a committee of five, whose duty it shall be to see that all ordinances adopted by this Convention are properly engrossed, said committee to be known as the Committee on Engrossment.

The report of the committee was adopted.

MR. SMITH (Mobile)—The Committee on Rules desire to report favorably resolution No. 229.

The Secretary read the resolution as follows:

Resolved, That when any article has been adopted, 300 copies thereof shall be printed for the use of the members of this Convention.

MR. SMITH—I move the adoption of that resolution. I desire to state that the chairman of the Committee on Harmony stated to the Rules Committee that it was not practicable for his

committee to review properly these reports unless each member of the committee had a copy of the corrected ordinance as finally amended, and it is to enable the members of the committee to do their duty that the resolution was offered.

MR. OATES—The committee would not need that number.

MR. SMITH—They are to be distributed among the delegates—those not needed by the committee.

MR. WHITE—I would state that there are twenty-five members of the Committee on Harmony and Consistency. We cannot take one bill or ordinance or article and do anything with that. There are twenty-five men on that committee, and each man will want to see the article as it is printed. Besides if we take the original the probabilities are that it would be lost. Besides that every member of this Convention ought to have his mind at work on the article after it is completed. When the article is completed it is not the one brought in by the committee at all, in many respects it is entirely changed, and every member of the Convention ought to have his printed copy before him so he could make any suggestions that he thought proper to make; therefore, I thought it necessary to have these printed.

The report of the committee was adopted.

MR. SMITH—I am instructed by the Committee on Rules to report resolution No. 213 without recommendation.

The clerk read resolution No. 213 by Mr. Fletcher, as follows:

Resolution No. 213, by Mr. Fletcher:

Whereas, This Convention was called chiefly to make a constitution regulating suffrage and taxation.

And, whereas, more than one-half of the time allotted for its work by the enabling act has been consumed in the passage of one article.

And, where, expedition is plainly essential to the carrying out of the purposes for which this Convention assembled, and to economize expenses to the State.

And, whereas, it is believed that the consideration and disposition of the Suffrage Article as soon as possible will greatly facilitate and hasten to completion the business now before the Convention; therefor be it

Resolved, That after the adoption of the article now being discussed, the article on Suffrage shall be taken up for consideration, and continued until finally disposed of.

Be it further resolved, That all articles heretofore made special orders shall be postponed and taken up in their regular order after the article on Suffrage shall have been adopted.

MR. PETTUS—I move to lay the resolution on the table.

MR. COLEMAN (Greene)—I hope the gentleman will withdraw that motion for the present.

The motion to table was withdrawn.

MR. COLEMAN—Mr. President and Delegates of the Convention, I was authorized this morning by the Committee on Suffrage and Elections to request that the report of that committee be taken up for consideration on next Tuesday. I could urge many reasons why this course should be adopted, but unless there is some objection, some disposition to want to know the reasons, why I prefer to let them remain unsaid. As stated in that resolution before us, and when the Committee on Suffrage and Elections submitted its report it was requested that it lie upon the table subject to the will of the Convention. We believe that next Tuesday, by that time ample time will have been given to every delegate of this Convention, and everybody else, to have fully informed themselves of its provisions, and we are satisfied that ample time will be given during the week to determine what disposition shall be made of the report of the committee. I therefore move, Mr. President, that the report of the committee on Suffrage and Elections, and the minority report, be set for hearing at 11 o'clock, and be the regular order of business on next Tuesday. I move that as a substitute.

MR. PETTUS—I move that the substitute be laid upon the table.

MR. OATES—Please withhold that for a moment. I wish to get in a qualification, I am in favor of fixing Tuesday if the report of the Committee on Suffrage and Elections but——

THE PRESIDENT—Does the gentleman withdraw the motion to table?

MR. PETTUS—Yes. If the gentleman wants to discuss it.

MR. OATES—No discussion on it at all—if this Convention be in the midst of the consideration of the report of the Committee on Legislative Department, that will not be chopped in two and laid aside before the other is taken up. I hope it can be done before that time, but I want it understood that the report of that Committee will not be laid aside.

MR. PETTUS—I move to take the amendment, the substitute and the resolution.

MR. WADDELL—I rise to a point of order.



THE PRESIDENT—The gentleman will state the point of order.

MR. WADDELL—All motions were out of order, because before they can make a motion, they will have to reconsider the action whereby the different reports of these committees were set for special orders.

MR. COLEMAN—I think the gentleman from Russell is mistaken. This report was laid upon the table by unanimous consent, to be taken up at the will of the Convention, that is the order and rule under which it was laid upon the table.

THE PRESIDENT—It seems to the Chair that the point of order is not well taken for the reason that when the Convention has made any matter of business a special order, it is in the power of the Convention to change its settings and postpone further consideration, or set a different time without reconsidering the vote. The point of order for that reason will be overruled, and the question is on the motion to table.

MR. JACKSON (Lee)—On that I call for the ayes and noes.

THE PRESIDENT—The question is on the motion to table the resolution reported by the Committee on Rules without recommendation and the substitute offered by the gentleman from Greene, and the amendment offered by the gentleman from Montgomery, and the ayes and noes are called for and the question is, is the call sustained.

The call for the ayes and noes was not sustained.

A vote being taken the motion to table was adopted by a vote of 65 ayes to 45 noes.

MR. BEDDOW—I rise to a question of personal privilege. I desire to correct the stenographic report of yesterday. I am reported as having said that owing to the force of the discussion of the convict question on yesterday I believe, Mr. Samford of Pike and myself, have concluded to offer an ordinance looking to the improvement of the convict system of the State of Alabama. What I did say was the following: "Owing to the course the discussion on the convict question took on yesterday, my belief is that Mr. White of Jefferson and myself, have decided to offer an ordinance looking to the improvement of the convict system in Alabama.

THE PRESIDENT—The official stenographer is requested to make a note of the correction of the gentleman from Jefferson.

MR. SAMFORD—I will ask to have it published in bold type.

MR. COLEMAN—I rise to a question of information. The report of the Committee on Suffrage and Election has had no special order made with reference to it. Is it necessary that we now say when it shall be taken up, or what order it shall follow, what course of business?

THE PRESIDENT—It would be in order for the gentleman from Greene to move that it be made a special order after the consideration of matters already made a special order.

MR. COLEMAN—I do make that motion.

THE PRESIDENT—It is moved by the gentleman from Greene that the consideration of the report of the committee on Suffrage and Election be made a special order to be taken up immediately on the conclusion of the special orders which are now set by the Convention.

MR. WATTS—I move to amend by making it a special order that the reports of the Committees on Judiciary and Corporations and Education and the other special orders already made by the Convention.

MR. SANDERS (Limestone)—I am opposed to making the report of the Suffrage Committee a special order in this Convention at all. I believe Mr. President, that on the conclusion of the consideration of that report it will be impossible to obtain a quorum of this Convention at any day thereafter. I dare say, Mr. President, that there is no member of this Convention who is more desirous of concluding its labors and getting home than I am, but I do not believe that we can discharge the duties for which we were sent here, properly, unless we conclude the labors of this Convention on all other matters before the Suffrage Report is taken up. I think, Mr. President, that the consideration of this report should be left to the wisdom of the Convention to be taken up or not as they see fit later on, without any special order, and I therefore move to table the resolution and the amendment.

MR. DUKE—I ask for a division of that question.

MR. OATES—I rise to a point of order the gentleman calls for a division of a subject embraced in a motion to table. The motion to table is the original motion, and the substitute and the call for a division cannot be entertained—I don't believe so.

THE PRESIDENT—Under the rules any delegate may demand a division of a question where the sense of the matter permits it.

MR. HOWZE—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. HOWZE—The motion of the gentleman from Montgomery, as I understand it, embraces the report of the Committee on Education and on Judiciary. These reports have no standing in this Convention until they are reported to the Convention, and can this report of the Suffrage Committee be deferred until after reports of committees not in or submitted to the Convention.

THE PRESIDENT—It is within the power of the Convention to resolve that this report will lie upon the table until those reports are considered.

MR. HOWZE—Rule 47 requires when reports are made they shall lie upon the table until in regular order it shall be taken up. Now there is no report from either of those committees before the Convention, and can they be considered now as being before this Convention and impede the progress of a report that is in the Convention? That is the point that I make.

MR. COLEMAN—I hope the gentleman will withdraw the motion to table for the present.

MR. SANDERS—Will the gentleman renew it for me?

MR. COLEMAN—I will give you the opportunity of doing it; I will yield to you that you may do it.

MR. WADDELL—I rise to a point of order. The regular order has not been dispensed with and I call for the regular order.

THE PRESIDENT — The point of order is too late; the question is on the motion to table. The chair is inclined to sustain the point of order made by the gentleman from Jefferson against the amendment of the gentleman from Montgomery.

MR. O'NEAL—I did not understand what the gentleman from Jefferson said but I know under the rules of this Convention these reports are considered in the order in which reported, unless a special order is made. The report of the Committee on Suffrage and Elections will be considered in the order in which it was submitted except special orders. The gentleman from Montgomery is undertaking to suspend the rules of this Convention, and under the rules of this Convention the report of the Committee on Suffrage comes up in the order in which it was reported, and we cannot change that order except by suspending the rules of the Convention.

MR. COLEMAN (Greene)—That is what we understood to be the meaning of the rule, but it seems that is not so. I understood that the report of the Committee on Banking preceded several of these reports which have been made. And the point was made that these other special orders had been given precedence over it. If it be true that the report is to be taken up in the or-

der in which it is reported, why the Committee on Suffrage and Elections is sustained—If that is the ruling of the President.

THE PRESIDENT—In the opinion of the chair it is in the power of the Convention to set these reports, and make them a special order for any particular time. Now the motion is that the report be made a special order after the special orders already set have been disposed of, and the motion of the gentleman from Limestone is to lay that upon the table.

A vote being taken the motion to table was adopted by 59 ayes and 49 noes.

MR. FLETCHER—With reference to the report of the Committee on Banking I thought the article would be considered in the regular order, but it seems that it has to be set down at a specific time and I would therefore ask that it be set down.

THE PRESIDENT—The chair will state for the information of the gentleman that reports have to be set down and considered in regular order when reached, unless displaced by a special order which this Convention makes, but it is in the power of the Convention to set the consideration of these reports for any time it pleases.

MR. COLEMAN—Does not that require a two-thirds vote to suspend the rules?

THE PRESIDENT—To make a special order?

MR. COLEMAN—Yes, the rules already fix the order in which they shall be taken up.

THE PRESIDENT—I would call the attention of the gentleman to Rule 30: "Any matter may, by a vote of the majority of the delegates present, be made the special order for any hour, which shall take precedence at that hour of any other business, except a motion to reconsider."

THE PRESIDENT—The Secretary will continue the call of the roll of delegates for introduction of resolutions, etc.

MR. BURNS—I desire to introduce a resolution.

Resolution No. 235, by Mr. Burns:

Resolved, That the Committee on Fees, Printing, etc., report to this Convention what it cost per day to run the Convention, and recommend some reduction of expenses.

Referred to Committee on Schedule, Printing and Incidental Expenses.

Mr. Carmichael (Colbert) Yielded his call to Mr. Kirk.

Resolution No. 236, by Mr. Kirk:

Relating to the powers of Municipal corporations to create debts.

Whereas, Section 10 of the Article on Taxation adopted by this Convention on Friday, the 5th day of July, 1901, providing a debt limit for Municipal corporations, makes an innovation of the laws of this State as heretofore existed, under which many of the towns and cities have created obligations which exceed the debt limit, and

Whereas, Such towns and cities under the operation of Section 10 are prevented from creating any additional debt, and are unable to protect themselves from extortion in the matter of securing water, light and sewerage.

Now, inasmuch as the cities of Sheffield and Tuscumbia have requested that they be allowed to pay off and adjust their obligations under the laws as they existed at the time their debts were created.

Therefore be it resolved, That the cities of Sheffield and Tuscumbia be exempt from the operation of Section 10, of said article on Taxation.

Referred to Committee on Taxation.

MR. KIRK—I send up a petition which I ask be read and referred to the committee.

The petition was read as follows:

Office of City Clerk, Sheffield, Ala., July 8, 1901.

To the Hon. James T. Kirk, Montgomery, Ala.:

Dear Sir—At a special meeting of the City Council of Sheffield held this day for the purpose of taking some action with regard to the limitation to be placed on the debt-creating power of municipalities, the following was unanimously adopted:

The City Council of Sheffield views with great apprehension the action of the Constitutional Convention in limiting the amount of indebtedness that the municipality can make, and it asks its representatives in said Convention, Hon. James T. Kirk and Hon. A. H. Carmichael, to do their utmost to relieve it from the burden of those provisions.

The debt of the city at the present is about fifteen (15) per cent. of its assessed values, and the character of its growth will necessitate its making the debt larger, or it will be smothered in its infancy. With the limitations provided for in the proposed article, the debt of the city will be more likely to grow from the defaulted interest; the real danger will be that these provisions,

though of some good effect elsewhere, will result in death to our municipal life.

In municipalities like this unlike those of slower growth, the ordinary rules do not and cannot be made to apply. The work ordinarily done gradually must here be done at once. Its public duties must be performed, or if not, the law will place on it an involuntary indebtedness, against which the provisions of the Constitution cannot protect it.

We ask that the debt-making power of Sheffield be limited only by its borrowing capacity, believing that with the limitation provided for on the power of taxation there is no danger of its unduly mortgaging its future.

Yours very obediently,

J. R. Coleman.

Clerk of the City of Sheffield.

Referred to the Committee on Taxation.

The hour of 10:30 having arrived, the Convention under the rules suspended the call of the roll for the introduction of resolutions, etc.

THE PRESIDENT—The special order is the consideration of the report of the Committee on Local Legislation. The question is on the amendment offered by the gentleman from Mobile to sub-division 19 of Section 1.

MR. EYSTER—I have a substitute to offer to subdivision 19 and the amendment thereto.

The clerk read the substitute as follows: "Resolved, That subdivision 19 of Section 1 be stricken from said section."

THE PRESIDENT—The question will be on the substitute offered by the gentleman from Morgan.

MR. O'NEAL—I believe I have the floor, 'Tis not my purpose to trespass on the time and patience of this Convention, and I regret the necessity of my appearing so often, but I do not think that a single delegate on this floor can deny the fact that the evils arising from the unlimited power of cities and counties in this State to borrow money by mortgage should be remedied. We are all bound to recognize the fact that this evil has become alarming in Alabama. The last two Legislatures, as I am informed, created bonded debts in this State for counties and municipalities exceeding \$8,000,000. It is not the purpose of the Committee by this Section to prohibit counties or cities from creating a bonded debt, but to prevent the creation of that bonded debt by a local or special law. Now the gentleman from Jeffer-

son argues that the bond buyers will not purchase a bond which is not issued under a special law. If that be true, and the gentleman from Jefferson is always conservative, and there is some force in his remarks, this Section could be amended so as to obviate his objection, but to strike out this Section would be to say to the Legislature of Alabama, you can continue issuing bonds without any authority from the people of the locality or county that may be affected. Now if you make an amendment such as I have prepared on the subject, it would certainly meet the objection made by the gentleman from Jefferson. Amend Section 1, Sub-division 19, of the Article on Local Legislation by adding the word "county" before the word "township" and adding at the end of said subdivision the following: 'Except in cases in which the issuance of said bonds or other securities have been authorized by a vote of the duly qualified electors of such county, township, city or village at an election held for such purpose in a manner that may be prescribed by law; provided, the General Assembly may pass special laws to refund bonds issued before the date of the ratification of this Constitution.' That would simply be saying to the Legislature that you must not pass a special law authorizing the issuance of a bond in any city or county in this State until it is authorized by an election of the people held in the manner prescribed by law, and we will leave it to the Legislature to prescribe the manner in which such election can be held, and the vote be shown affirmatively—of course that is a matter of legal detail, as to how it can be shown. The gentleman from Morgan moves to strike out, and so does the gentleman from Henry. I assure the Convention that this provision does not interfere with dispensaries. There seems to be an idea prevailing in this Convention that to prevent the possibility of any provision in reference to local law affecting dispensaries, to strike down every safeguard which we have incorporated in this provision against the evils of local legislation. Everything else must be subordinated to the liquor traffic in this State and the evils of Local Legislation, lobbying, intrigue exists in other States must be ratified in this Convention for fear of interfering with some dispensary or local liquor law in some county. This provision has nothing to do with a dispensary or liquor traffic, and I beg this Convention to pause long and well before they strike down this provision, because—gentleman look at this book of acts of the last Legislature—over three-fourths of this book consists of charters of corporations authorizing the issuance of bonds. Each of these acts, according to the Secretary of State, costs \$50 to \$150, so the people of Alabama are taxed with thousands of dollars for the issuance of these bonds, and in the list of Acts of the General Assembly the local laws are four times that of the others. Three-fourths of them consisting of acts authorizing the issuance of bonds and charters of corporations. Now we don't propose to

say that you shall not allow corporations, cities or counties to issue bonds, but we do say that you ought not to permit it to be done until the authority comes from the people of a county or the locality to be affected. If you do not put in this safeguard, it will result in bankruptcy to many cities and towns in this commonwealth. Whenever you say to the people of Alabama in every county, district, city, or municipality in this State, if you desire to create a debt, a bonded debt, let the people of your locality ratify and sanction it, and then the Legislature can pass a special law and meet the objection made by the gentleman from Jefferson, that bond buyers won't purchase bonds that are not issue by special act of the Legislature. All we seek to do is to remedy this evil. It is an evil which the people of Alabama are demanding with one voice that we remedy. Now, we heed their appeal, an appeal coming from every portion of the State, which we pledged upon the stump we would grant them when this Convention was held—we come here and strike down the only provision in this article on local law which gives you relief from this great and alarming and dangerous evil in this commonwealth.

MR. OATES—Will the gentleman permit an interruption? I simply want to suggest to the delegate from Lauderdale that in his amendment he makes the same provision, almost identical, with the Constitution and law of the great State of Illinois, and it has been tried there with great satisfaction. It is a proper safeguard to throw around the people.

MR. O'NEAL—You will find the same provision in nearly every Constitution that has been adopted in the past twenty-five years.

MR. BOONE—May I ask the gentleman a question? I favor your amendment, and I wish to ask if you have offered it—I did not hear you offer it.

MR. O'NEAL—I cannot offer it now, because there is an amendment and substitute, but if the Convention will vote down the amendment and substitute I will offer it now. One word more, we all recognize the fact that the greatest evil from local legislation arises from counties and cities coming before the Legislature in the guise of local laws to secure special privileges and advantages. If you strike down this provision you allow that to be done; and any county in the State or any city or Board of Aldermen or Commissioners' Court may go to their representatives and ask them to go down to Montgomery and authorize the issuance of millions of dollars of bonds. And the people of your county would wake up some morning and find that they were saddled with a bonded debt. They protest against it. But what is the necessity of their protesting? You are too late, the law has passed. I desire to make a motion to lay the amendment and substitute on the table.



MR. DENT—I move to table the amendment and substitute.

MR. PRESIDENT—The gentleman from Barbour (Mr. Dent) moves to table the substitute and amendment.

And upon a vote being taken it was carried.

MR. O'NEAL—I offer this amendment to Section 1, Subdivision 19.

The Clerk then read the amendment as follows:

Amend Section 1, Subdivision 19, Article — Local Legislation, by adding the word "county" before the word "township" and adding at the end of said subdivision the following: "except in cases in which the issuance of said bonds or other securities has been authorized by a vote of the duly qualified electors of such county, township, city, town or village, at an election held for such purpose in the manner that may be prescribed by law. Provided, the General Assembly may pass special laws to refund bonds, issued before the date of the ratification of this Constitution.

MR. PRESIDENT—The question is on the adoption of the amendment proposed by the gentleman from Lauderdale. Is the Convention ready for the question?

MR. SAMFORD—I would like to ask the gentleman to allow me to add one word to his amendment. I call attention to the fact that at the last General Assembly and in General Assemblies before that time, in addition to making special laws for the issuance of bonds for towns, cities, counties, etc., that private corporations were having private bills—I don't know that it would come in in that connection and I see that it would not make good sense in there; so I will not offer it.

MR. PRESIDENT—Is the Convention ready for the question?

And on a vote being taken the amendment offered by Mr. O'Neal was adopted.

MR. PRESIDENT—The question recurs on the subdivision as amended.

MR. DENT—I move its adoption.

And on a vote being taken the motion prevailed.

MR. deGRAFFENREID—I ask unanimous consent to be allowed to introduce a short resolution, and ask that it be referred to the Committee on Rules.

Consent being given, resolution No. 237, by Mr. deGraffenreid, as follows, was referred to the Committee on Rules:

Resolution No. 237, by Mr. deGraffenreid:

Resolved, That after the present week, this Convention shall dispense with all clerks of committees except the clerk of the Committee on Rules and a clerk for the Committee on Order, Harmony and Consistency of the Whole Convention.

Resolved further, That the clerks of the Committee on Rules and of the Order, Harmony and Consistency of the Whole Constitution shall serve the chairman of the other committees when their services are required.

Referred to the Committee on Rules.

MR. SAMFORD—I move a suspension of the rules for the purpose of putting that resolution on its passage.

THE PRESIDENT—The resolution has already been referred.

The Clerk then read Subdivision 20, as follows:

“Amending, confirming or extending the charter of any corporation or remitting the forfeiture thereof.”

The Clerk then read Subdivision 21, as follows:

“Creating, extending or impairing any lien.”

MR. SPRAGINS—I move to amend Subdivision 20 by inserting the word “private” after the word “any.”

Mr. deGraffenreid here took the chair.

MR. O'NEAL—We accept that.

THE PRESIDENT PRO TEM.—The question is upon the adoption of the amendment which has been accepted by the committee. The Clerk will read the subdivision as amended.

MR. O'NEAL—On behalf of the committee I accepted that, but on reflection I find that we cannot do so, for the reason that it proposes to amend the amendment “extending the charter of any corporation.” That is what we want to prevent the Legislature from passing all these private charters of cities and towns; and if we add this word “private,” the evils of creating local charters would still exist. I say on reflection the committee cannot consent to the amendment. This section prohibits the Legislature from passing local laws “amending, confirming or extending the charter of any corporation.” And one of the largest evils of local legislation consists in doing that thing. If we confine it to private corporations, they could continue to amend the charters of municipal corporations and fill up more space in the acts of the Legislature than anything else. That all can be accomplished by a general law; and therefore we cannot consent to it.

MR. DENT—I move to lay the amendment on the table.

THE PRESIDENT PRO TEM.—There is no amendment before the Convention. The gentleman is reducing his amendment to writing. As soon as he does the Chair will recognize the gentleman from Barbour (Mr. Dent), for the purpose of making that motion.

MR. DENT—I don't think we ought to wait upon the gentleman to put his amendment in writing. I move the adoption of the subdivision as it stands.

MR. HEFLIN (Randolph)—I move that the gentleman be allowed time in which to write his amendment before it is voted down.

The Clerk then read the amendment offered by Mr. Spragins, as follows:

“To amend Subdivision 20 by inserting the word “private” before the word corporation in the first line.”

MR. SPRAGINS—My idea was that the committee intended that that subdivision referred to private corporations and had by negligence left out the word “private.” The first part of the subdivision seems to refer to any corporation, either private or public; and the second part of the sub-division seems to refer only to private corporations with reference to the forfeiture of charter. My idea in asking that the word “private” be inserted before the word “corporation” was, in the event that some municipal corporation might desire to change the corporate limits of the city by extending them. And it is the purpose of my amendment to fix it so that the Legislature could authorize this to be done.

MR. DENT—It seems to me that the object sought to be secured by the gentleman, who offered the amendment (Mr. Spragins) can be secured under a general law. That is one of the very things that we want to stop the Legislature from acting upon; and if you give them the power to act, why they could just change the whole thing. Besides, the provision prevents the Legislature from remitting the forfeiture of any charter. I think it is a very wise provision, and I renew my motion to table the amendment.

MR. O'NEAL—Will the gentleman permit a suggestion?

MR. DENT—Certainly.

MR. O'NEAL—My attention has been called to the fact that the Supreme Court has decided that the word “corporation” does not mean municipal. It means to imply private corporations. The intention was to read private corporations.

MR. FLETCHER—The Committee on Banking have made a report and this report has not been adopted. Under the old Con-

stitution, there is an old clause which says that all bank charters shall expire after a limitation of twenty years, unless extended by the Legislature. How does this affect that?

MR. O'NEAL—I think after the expiration of a charter of any bank, the Legislature would have to pass a general law providing for the extension of the charters of institutions of that character. There is a general law on that subject which provides for the extension of banks at the expiration of their charters.

THE PRESIDENT PRO TEM.—The question is upon the adoption of Sub-division 20, as amended; and the clerk will read the sub-division, as amended.

MR. O'NEAL—We ask unanimous consent to add the words "private or municipal" corporations. The consent was granted.

THE PRESIDENT PRO TEM.—The question is upon the amendment of Mr. Spragins.

MR. SANDERS—The question is upon the substitute as offered by the gentleman from Lauderdale (Mr. O'Neal).

MR. O'NEAL—What is his amendment?

THE PRESIDENT PRO TEM.—My recollection is that it was not to extend to any private corporations. You want to amend by adding the word "municipal." Do you ask unanimous consent that that should be done?

MR. O'NEAL—I move to lay the amendment of the gentleman—

(Cries of no! no!).

MR. O'NEAL—Well, have his amendment read.

The clerk then read the amendment offered by Mr. Spragins as follows:

"To amend Sub-division 20 by inserting the word "private" before the word 'corporation,' in the first fine."

MR. O'NEAL—We accept that amendment. I call attention to the fact that the amendment as made the word "private" is already there.

MR. WATTS—We accept the word "private" but we request to add "or municipal."

THE PRESIDENT PRO TEM.—That has to be done by unanimous consent.

MR. WATTS—It reads now "private or municipal."

MR. BROOKS—I understand the act of the committee, on this proposition, as amended, is to prevent the Legislature from

passing local legislation in regard to the amending, confirming or extending the charter of any private or municipal corporation. Now it is possible that this Convention may adopt ordinances giving the General Assembly power or making it incumbent upon the General Assembly, to incorporate by general laws, cities of different sizes or of different importance, as regards population, etc.; but in doing that it may be necessary for the General Assembly, in passing these general laws, to except from the provisions of the general laws such particulars as may be necessary for them to have the regulation and control over the charters of corporations or municipalities. Questions may arise at subsequent periods which are not now dreamed of; and under the general law there may be no way to amendment of existing charters. My idea is that whatever general law the General Assembly may pass in regard to incorporating towns, cities and villages, there ought to be some room left to the General Assembly to make such changes as in its wisdom it may see fit, when under the general law these changes can not be made by the people of these respective communities. Therefore, I am opposed to putting in here the word "municipal" in regard to municipal corporations.

MR. BOONE—I move the previous question on the adoption of the section as amended.

MR. SPRAGINS—Unanimous consent was never given the committee to insert the word municipal.

THE PRESIDENT PRO TEM.—The word "municipal" has been inserted by unanimous consent and was so placed before the Convention; no one objected. The question is whether the previous question shall be put.

And upon a vote being taken the previous question was ordered, and upon a further vote, the sub-division was adopted.

Sub-divisions 21, 22 and 23 were read by the clerk as follows:

Twenty-first—Creating, extending or impairing any lien.

Twenty-second—Chartering or licensing any ferry, road or bridge.

Twenty-third—Regulating the jurisdiction and fees of Justices of the Peace or the fees of constables.

MR. LONG (Walker)—I desire to offer an amendment to Sub-division 22.

The clerk then read the amendment offered as follows:

"To amend Sub-division 23 by striking out the words "jurisdiction or" in the twenty-eighth line."

MR. WATTS—There is an error there, and after jurisdiction should be “or.”

THE PRESIDENT—Does the gentleman ask unanimous consent to make the correction?

MR. WATTS—Yes, sir.

THE PRESIDENT PRO TEM.—Unless there is objection made, the correction will be made. The chair hears no objection and the clerk will make the correction.

MR. WATTS—To strike out the word “and” and insert the word “or” after the word “jurisdiction.”

MR. LONG (Walker)—I offer that amendment because it is necessary for the Justices of the Peace, in some localities in Alabama, to have more jurisdiction than in others. In some of the rural districts in our State they have jurisdiction as to prohibition laws, while in other counties and cities it may not be necessary for him to have this jurisdiction. I call the attention of the Convention to that fact. I think it is an important amendment; because I think there are places in Alabama where the jurisdiction of the Justice of the Peace is just as important as one in New York; and in the mining camps in Alabama, where they have a court every six months, Justices of the Peace should have more jurisdiction than in the city of Montgomery or Mobile, and each county should be allowed to regulate this.

MR. WATTS—Never in the history of the State has a Justice of the Peace in one part of the State been given different jurisdiction from another part.

MR. LONG (Walker)—The gentleman is mistaken.

MR. WATTS—If so it ought not to be and this is to prevent it in the future.

MR. FITTS—The gentleman is very much mistaken. In Pickens County the Justices of the Peace have very large jurisdiction.

MR. WATTS—I thank the gentleman for calling my attention to it. That is a good reason why this sub-division should be adopted; and I move to lay the gentleman's amendment on the table.

MR. NeSMITH—I wish to offer a substitute to the amendment.

The Clerk read the substitute as offered by Mr. NeSmith as follows:

"To amend Subdivision 23 of Section 1, so as to make the same read as follows: "23. Regulating the jurisdiction of Justices of the Peace, except in precincts, in whole or in part, within towns of 2,500 inhabitants, or more, and regulating the fees of Justice of the Peace or the fees of constables."

MR. SAMFORD—I rise to a point of inquiry.

THE PRESIDENT PRO TEM—The gentleman will state the point of inquiry.

MR. SAMFORD—I was engaged at something else a moment ago and I failed to catch the amendment that was offered to the Subdivision, and I would like for the Clerk to read the amendment again.

The Clerk then read the amendment offered by Mr. NeSmith to Subdivision 23 of Section 1.

MR. SAMFORD—Not that one. I heard that one.

The Clerk then read the amendment offered by Mr. Long (Walker) to Subdivision 23.

MR. NeSMITH—I am a member of the Judiciary Committee and that Committee has decided to report favorably the Section providing that any precinct lying in whole or in part, within a town of 2,500 inhabitants, or more, the General Assembly may establish an inferior Criminal Court to absorb the jurisdiction of the Justices of the Peace within that town or those towns or the precincts within those towns. It seems to me that Section 23, as reported by the Committee, would perhaps be in conflict with that provision; and the exception that I have offered to except from this provision precincts lying in whole or in part within a town of 2,500 inhabitants or more, would prevent that conflict, and I offer the amendment.

MR. WADDELL—If the plan was adopted, that you suggest, would this in the least conflict with the establishment of inferior courts? This does not mention anything but Justices of the Peace.

MR. NeSMITH—Possibly in those towns in force in Alabama confers upon Inferior Criminal Courts additional jurisdiction; but I doubt whether it could be done under this Section.

MR. O'NEAL—The system that is now in force in Alabama to confer upon Justices of the Peace in different counties and different cities different jurisdiction. You will find in almost every county in Northern Alabama that is the case. I know Justices of the Peace in certain counties who have jurisdiction concurrent with the Circuit Court, and every one of us know that there are many acts on the subject of conferring jurisdiction on Justices of the Peace, the Justices of the Peace themselves don't know what their jurisdiction is; and it takes a well trained lawyer to ascertain the

different powers of the Justices of the Peace in the different counties in Alabama. The result is that it is confusing.

MR. COLEMAN (Greene).—Is there anything in this subdivision that will prevent the Legislature, if they see proper to do so, to alter the jurisdiction and fees which now prevail in particular counties? Suppose some county has conferred jurisdiction of misdemeanors upon Justices of the Peace and increased the fees?

MR. O'NEAL.—The provisions are that any local law that now exists would be repealed or can be repealed by local law. We know that in a great many cities of this State the administration of the law by the Justices of the Peace has become to be a great evil. There are more frivolous prosecutions brought in these courts than any other tribunal in this State. They have become to be a source of oppression on the poor, helpless and ignorant negro, as well as the laboring man, who are constantly dragged into court by these officials whose fees depend upon a conviction. I say it is a consensus of opinion of the people of Alabama that it would be a wise step for this Convention to relegate the Justices of the Peace to days gone by when they only had the power to bind over offenders to the higher court and to divest them entirely of jurisdiction in civil cases. They deprive men of property and though it be a small amount of property, it would be a large amount to some poor man and if you are going to vest this jurisdiction in anybody, place it with men who are learned in the law.

MR. COBB.—Under this provision, would not the Legislature have the power to destroy any jurisdiction of Justices of the Peace in certain localities?

MR. O'NEAL.—Not at all. This don't destroy, but it says that you cannot give the Justices of the Peace in one county jurisdiction different from the jurisdiction of Justices of the Peace in other counties. It is a regulation of the jurisdiction and fees of the Justices of the Peace; in other words, it prevents this mass of confusion and this uncertainty which exists in the minds of the people by having local laws in every county giving Justices of the Peace from one county jurisdiction different from other counties. We want the laws uniform. If you want to establish a court, place the jurisdiction in a man learned in the law and do not select some magistrate whose fees depend upon his conviction or his deciding in favor of a party having the most money or power.

MR. COBB.—Suppose that court was established, could you take away entirely the jurisdiction of the Justices of the Peace.

MR. O'NEAL.—Yes sir, you can take it away.

MR. COBB.—Under this regulation?

MR. O'NEAL.—Yes, sir, but you would have to do it all over the State.



MR. COBB—That's the point.

The President here resumed the Chair.

MR. O'NEAL—You could if you wanted to do away with Justices of the Peace in a county; you could do it under this provision. We have here that no local law can be passed on any subject not provided for. If the gentleman from Macon will give me his attention one minute, I will explain that. That won't prohibit the Legislature from passing a local law which regulates the jurisdiction. We don't say that the Legislature cannot pass a local law, abolishing the fees of the Justices of the Peace of a certain county. That can be done by a local law, but the local law will have to be published in the county newspaper as per Section 3, which reads as follows: "The General Assembly may repeal any special, private or local law upon notice being given and shown as provided in the last preceding Section."

MR. COBB—But this is not a local law.

MR. O'NEAL—I understood your question was if the people of a county desired to take away the jurisdiction of the Justices of the Peace, they would have to do it.

MR. COBB—If the Chair will recognize me, I will explain myself without taking up so much time.

MR. O'NEAL—I have no disposition to cut you off.

MR. COBB—There is a great sentiment, Mr. President, in this State, in sections of it, at least, to take away from the Justices of the Peace all jurisdiction. And in that direction the Committee on Judiciary have prepared and they propose to submit to the Convention allowing justices of the Peace to be abolished in sections where their duties can be better performed by some other courts, particularly in the cities. This is done in view of the many evils to which the gentleman has referred, that is, the abuse of the power by the Justices of the Peace, in some cities in this State. Now, the proposition which I submitted or the question I propounded, was if this article remains as it is, whether the power would remain with the Legislature to take away from the Justices of the Peace all jurisdictions in certain localities.

MR. WALKER—Will the gentleman permit an interruption?

MR. COBB—Certainly.

MR. WALKER—The provision as will be suggested by the Judiciary Committee, will confer upon the Legislature, in some instances, specific power. It is a general provision and certainly would not abridge the power that was specifically conferred upon the Legislature by the provision that will be reported by the Judiciary Committee and for that reason it will not conflict.

MR. COBB—If this provision does not conflict with the idea of allowing the Legislature to withdraw from the Justices of the Peace, in certain localities, all jurisdiction, I would be perfectly content.

MR. WILLIAMS (Marengo)—How would it suit you to amend by adding at the end of the subdivision "except said office of Justice of the Peace may be abolished in certain sections?"

MR. COBB—That is the amendment offered by my friend on the right here.

MR. O'NEAL—I am willing to accept that amendment.

MR. COBB—My own opinion is, if you strike out the two words "jurisdiction" and "or," as proposed by the amendment of Mr. Long of Walker, that would relieve the whole difficulty and still leave it in the power of the Legislature to control the jurisdiction of the Justices of the Peace in those localities where it is wise to abolish their jurisdiction altogether.

MR. WATTS—I move to lay the amendment on the table.

THE PRESIDENT—Both of them?

MR. WATTS—Yes, sir.

MR. NeSMITH—I ask for a division of the question.

THE PRESIDENT—It is moved that the substitute offered by the gentleman from Lamar and the amendment offered by the gentleman from Walker be laid upon the table, and a division of the question is called for. The question will be first upon the motion to table the substitute.

And on a vote being taken, the motion prevailed.

THE PRESIDENT—The question now is on the motion to table the amendment offered by the gentleman from Walker.

And on a vote being taken, the motion prevailed.

MR. WILLIAMS (Marengo)—I wish to offer an amendment.

The clerk then read the amendment offered by Mr. Williams of Marengo as follows: To amend Sub-division 23 by adding at the end of the sub-division, "except said office of Justice of the Peace may be abolished in certain sections."

MR. deGRAFFENREID—I move to lay the amendment on the table.

And on a vote being taken, the motion prevailed.

MR. WATTS—I move the adoption of the sub-division and call for the previous question.

MR. JONES (Bibb)—I desire to amend Sub-division 23 by striking out Sub-division 23, Section 1.

MR. WADDELL—I move to lay that amendment on the table.

And on a vote being taken, the motion prevailed.

MR. WATTS—I move the adoption of the sub-division and call for the previous question.

And on a vote being taken, Sub-division 23 was adopted as amended.

The clerk then read Sub-divisions 24 and 25 as follows:

"Twenty-fourth—Establishing separate school districts."

"Twenty-fifth—Establishing separate stock districts."

MR. WATTS—At the end of Sub-division 25, I suggest that it should be amended to read as follows: "To amend Sub-division 25 so as to read as follows: "Establishing districts in which stock shall or shall not run at large."

MR. SAMFORD—I move the adoption of the sub-division as it stands. It is a mere matter of verbiage, and I reckon everybody knows what a stock district is in Alabama. They do in my county.

The clerk then read the amendment offered by Mr. Watts, to amend Sub-division 25, as follows: To amend Sub-division 25 so as to read "establishing districts in which stock shall or shall not run at large."

MR. GRANT—I move to lay the amendment on the table.

And on a vote being taken, the amendment was tabled.

MR. SAMFORD—I move the adoption of the subdivision.

And a vote being taken, the subdivision was adopted.

MR. BLACKWELL—I desire to offer an additional sub-division.

MR. WATTS—I would suggest that an additional sub-division is not in order until we get through with the sub-division in the report of the committee and the supplemental report of the Committee on Legislation.

THE PRESIDENT—It seems to the chair that the point is well taken.

The clerk then read Sub-division 26 as follows:

Twenty-sixth—Creating, increasing or decreasing fees, percentage or allowances of public officers. No special, private or

local law, except a law fixing the time of holding courts, shall be enacted in any case, which is provided for by a general law, or when the relief sought can be given by any court of this State, and the courts and not the General Assembly shall judge as to whether the matter of said law is provided for by a general law and as to whether the relief sought can be given by any court; nor shall the General Assembly indirectly enact any such special, private or local law by the partial repeal of a general law. The General Assembly shall pass general laws for the cases enumerated in this section.

MR. SANDERS—The report from the Legislative Department is added, by agreement with the chairman, after the words "public officers," in Sub-division 26, Section 1, as recommended by the Legislative Department, and should be taken up now. It reads as follows:

"Now, in pursuance to an understanding and agreement with the chairman of that committee, your Committee on Legislative Department instructs me to report and recommended for adoption the following additional restrictions upon the power of the Legislature to enact local, special or private laws to come in after the words "public officers" in Sub-division 26 of Section 1, of the Article already reported by said committee, to wit."

THE PRESIDENT—The next will be No. 27, as reported by the Committee on Legislative Department. It seems to the chair that this report should be offered as an amendment in some way.

MR. HARRISON—I desire to make an inquiry of the chairman of the committee: Your Section 1 says: "The General Assembly shall not pass a special, private or local law in any of the following cases." I don't exactly understand this, whether it includes Sub-division 26. Then you start off on a different line by saying "the General Assembly shall pass general laws for the cases enumerated in this Section." That does not seem to be proper and germane at all.

MR. O'NEAL—I know all about that and I desire to state—

THE PRESIDENT—The Chair will state that the Convention now has under consideration the report of the Committee on Legislation; and if different paragraphs are to be added, they should be added by amendment.

MR. O'NEAL—I desire to state to the President, that we agreed to accept this amendment; and it was accepted by unanimous consent on the part of the Convention at the time this report was made. It was agreed that the report of the Committee on Legislative Department, would be considered as an amendment to our report—as a supplemental report.

THE PRESIDENT—Was the amendment adopted by the Convention?

MR. WADDELL—Yes, sir; by unanimous consent.

MR. O'NEAL—The amendment was adopted with the understanding that it should be treated as a part of the report. That is my recollection.

THE PRESIDENT—The Chair inquires whether the Journal sustains the recollection of the gentleman from Lauderdale?

The Chair will state that the journal shows that the action of the Convention was, that the report should be considered in connection with the report of the Committee on Local Legislation. Hence, it would seem necessary that the Convention take some action in adopting this as an amendment or as an additional subdivision to the report.

MR. O'NEAL—I move that it be considered as a supplemental report.

MR. OATES—In order to avoid any difficulty in that way in considering Section 26 as it stands here in type, we could take up items of sub-divisions reported by the Committee on Legislative Department, and the arrangement of the numbers will present no difficulty. We can settle that hereafter, we can consider subdivisions and such amendments as are desired and then take up the other.

MR. PRESIDENT—It would be perfectly competent for the Committee on Local Legislation to propose to add this subdivision.

MR. O'NEAL—In view of the suggestion from the Chair, I will make that motion, though we do not concur in the latter part of this report.

MR. PRESIDENT—How far does that concurrence extend?

MR. WATTS—To the subdivision.

MR. PRESIDENT—Thirty-five?

MR. WATTS—Yes, sir.

MR. O'NEAL—Section 35, down to where it says, "Your Committee do not concur in section 5 of said Article as reported by the Committee on Local Legislation and recommends as a substitute therefor Section 25 of Article 4 of the present Constitution."

MR. PRESIDENT—The Committee on Local Legislation concurs in subdivisions 27, 28, 29, 30, 31, 32, 33, 34 and 35?

MR. O'NEAL—We are willing to adopt that as an amendment to the report of the Committee on Legislation and be considered subdivision by subdivision.

MR. HARRISON—I desire to enquire of the Chairman of the Committee on Local Legislation if the copy of the printed report as furnished us is the report of the Committee on Legislation? Section 26, as it is reported, are we to consider that as the official report of the Committee?

MR. O'NEAL—Certainly, sir; that's what we are on now.

MR. HARRISON—I renew my suggestion to the Chairman of the Committee, if I understand subdivision 26, it is improperly there and is not germane.

MR. WALKER—There are two reports now being considered by the Convention. The first is the report of the Committee on Legislation down to subdivision 26; and then the purpose is to take up the report of the Committee on Legislative Department and consider that report.

MR. HARRISON—That's what I did not understand, subdivision 26 as printed here in the report of the Committee on Local Legislation.

MR. PRESIDENT—The report of the Committee on Legislative Department taken up after the word "officers" in subdivision 26.

MR. HARRISON—After the word officers: The point I desire information on, if it be reported as printed here, there are six or eight other lines that precede the conclusion of that whole subdivision.

THE PRESIDENT—The gentleman from Limestone called the attention of the Chair to the understanding with the Chairman, and the Chair having stated this matter, they have provided that the report of the Committee on Legislative Department should be taken up at that point, after the word "officers."

MR. HARRISON—I would like to ask if the other part of this subdivision 26, as printed, is being considered?

MR. O'NEAL—It will be considered.

MR. PRESIDENT—It will have to be re-numbered.

MR. OATES—There is no reason to misunderstand that. The remaining portion of the subdivision is to be considered. But, as I understand the statement of the Chairman on Local Legislation, he proposes to leave that as it is until subdivisions numbers 27, 28, 29, etc., reported by the Committee on Legislative Department, are

considered; and then go back to subdivision 26 of that section and go on through with the report.

MR. PRESIDENT—Wouldn't it be necessary to change the number of that section?

MR. OATES—It may or it may not.

MR. PRESIDENT—Part of subdivision 26 would stand as subdivision 28 and then subdivision 27 would succeed it?

MR. OATES—Yes, sir.

THE PRESIDENT—What would you do with the balance of subdivision 26? Will it not have to be renumbered to make it in order?

MR. OATES—It may. Depends on the action of the Convention.

MR. O'NEAL—We don't desire to put it in a separate section, because it is in the proper section now.

THE PRESIDENT—It can succeed these other subdivisions?

MR. O'NEAL—Yes, sir.

THE PRESIDENT—The Committee on Local Legislation offers as an amendment to Section 1, Subdivisions 27, 28, 29, 30, 31, 32, 33, 34 and 35, as reported by the Committee on Legislative Department.

The Chair will state that these subdivisions will be open to amendment, as stated heretofore.

MR. WEATHERLY—I desire to offer an amendment. There is an incongruity in it and it ought to be considered as a whole. I therefore move that these subdivisions, as reported by the Committee on Legislation, be taken up after Subdivision 25.

MR. WATTS—The difficult that seems to be on your mind and on the mind of the gentleman from Lee, will be obviated by simply, when we get to it, inserting "Section 2" before the words "No special, private or local law shall be passed on any subject not enumerated, etc."

MR. HARRISON—Exactly.

MR. WATTS—We will do that when we get to it.

MR. HARRISON—And go ahead and transform line 39.

MR. WEATHERLY—I move that we begin the consideration of the subdivisions as reported by the Committee on Legislation. You have a lot of stuff in there that don't belong in there.

MR. O'NEAL—The subdivision ends after the word "officers."

MR. WEATHERLY—It don't end that way in my report.

MR. O'NEAL—It is printed badly.

MR. WEATHERLY—I move that the consideration of this subdivision be postponed to be taken up after Subdivision 35.

THE PRESIDENT—The gentleman from Jefferson moves to postpone the consideration of Subdivision 26 as it appears in the printed report.

MR. HARRISON—I would suggest to the gentleman from Jefferson on that proposition that it would be better to adopt so much of the Subdivision 26 as is printed—

MR. SANDERS—I call for the previous question.

THE PRESIDENT—The motion of the gentleman from Jefferson is to postpone the consideration of Subdivision 26 until the subdivision as reported by the Committee on Legislative Department has been considered and passed upon.

And upon a vote being taken the motion was lost.

MR. HARRISON—I do not remember, and I ask the Chair for information, if the latter part of that section has not been stricken out or what are we adopting as Section 26?

THE PRESIDENT—The Convention seems to be wholly unable to determine what it wants to do with Section 26.

MR. HARRISON—I move that so much of Section 26 as is in the copy before us be adopted as is embraced between the words "creating" and "officers" on the first line.

MR. O'NEAL—That is the whole of Subdivision 26. It is simply due to an error in printing.

THE PRESIDENT—Will the gentleman from Lee reduce his motion to writing. The Chairman of the committee is mistaken, it is not due to the printer, but it is due to the original copy, and there is no paragraph at all in the original copy.

MR. deGRAFFENREID—I move that Section 26 be referred back to the committee.

To which were expressions of dissent.

MR. O'NEAL—I move to lay that motion on the table.

The motion was carried.

MR. SAMFORD—I move to lay 26 on the table.



The motion was lost.

MR. HARRISON—I offer this amendment.

The amendment was read. Amend subdivision 26 by striking out all of the subdivision after the word “officers.”

MR. WATTS—I really don’t understand how it is that you cannot understand that Section is comprised alone of the words “creating, increasing or decreasing fees, percentage or allowance of public officers.” That is the whole of Subdivision 26. We do not want the balance of Section 1 stricken out. We are willing to consider Subdivision 26 just as I read it, and afterwards consider the balance of Section 1.

MR. COBB—I move to amend the motion of the gentleman from Lee.

The amendment is simply that Section 26 be considered as consisting only of that first sentence and the balance be numbered 27.

The amendment was declared out of order because not in writing.

MR. HARRISON—In support of my amendment, I desire to say that the other can be considered as a separate section. My amendment is not perfect because I should have moved to strike out all down to the word “law” in the 38th line.

MR. COLEMAN (Greene)—The committee has reported as Subdivision 26 these words: “creating, increasing or decreasing fees, percentages or allowances of public officers.” The report of the Legislative Committee begins there and goes on. The Committee on Local Legislation has accepted that and after we pass upon the 26th subdivision we will go back and consider beginning at the words “no special, private or local law,” which may be numbered as Subdivision 36.

MR. O’NEAL—The last subdivision offered by the Legislative Department is 35, then beginning with “no special” that will be numbered 36 and the whole report of the committee will be uniform and there is no difficulty in the whole matter. I adopt the motion of the gentleman from Greene and on that I call the previous question. I ask unanimous consent to settle the controversy, that the words “creating, increasing or decreasing fees, percentage or allowances to public officers, be made subdivision 26.

THE PRESIDENT—Does the gentleman ask unanimous consent to withdraw temporarily the balance of the subdivision as it is printed?

MR. O’NEAL—Yes, sir.

To which no objection was made and upon a vote being taken subdivision 26 was thereupon adopted.

Subdivision 27 was read as follows: "Exemption of property from taxation or from levy or sale."

MR. DAVIS (Etowah)—I offer an amendment, which will be a separate subdivision.

THE PRESIDENT—It is not in order at this time.

MR. PILLANS—I ask to amend that subdivision by making it read exempting property, instead of exemption of property.

MR. O'NEAL—We accept that.

THE PRESIDENT—The Chair cannot entertain amendments that are not in writing, because it would be impossible to keep the journal straight.

The amendment was prepared and read as follows: "Amend subdivision 27 by striking out "exemption of" and inserting "exempting."

MR. WATTS—I move its adoption.

Upon a vote being taken the amendment was adopted, and upon a further vote the subdivision was amended as adopted.

Subdivision 28 was read as follows: "Exempting any person from jury, road or other civil duty."

There being no amendments or objections offered, subdivision 29 was read as follows: "Laying out, opening, altering, or working roads or highways."

MR. DENT—I send up an amendment.

The amendment was read as follows: "Amend subdivision 29 Article I, by adding at the end of the subdivision the following words: "Provided, that this subdivision shall not affect counties which already have special laws on the subject of public roads."

MR. OATES—I am satisfied that amendment is wholly unnecessary. This only prohibits the legislature, after its ratification, from doing these things. It does not have the effect of repealing any existing law, and it don't follow that the legislature must do it, and therefore there is no necessity for the amendment.

MR. DENT—If that construction is put upon it, I withdraw the amendment.

MR. HARRISON—I would like to inquire of the Chairman of the Committee, what necessity exists in the opinion of the Committee, for including this subdivision in the law?

MR. O'NEAL—The Chairman of the Committee on Legislative Department inserted that, and he will answer the interrogatory.

MR. OATES—In the opinion of two Committees of this house, it was thought well to put it there, simply to prevent local legislation, making special provisions in local laws, for the laying out, opening, altering or working roads or highways. It was to prevent the legislature from passing laws operating differently in different localities, as there is no necessity for it.

MR. HARRISON—I asked the gentleman a question, and I desire to say that I do not think the explanation shows a sufficient necessity for the incorporation of this provision. The question of improving the public roads is a live one in this State, and some counties have made great progress in this direction. I do not want to interfere with it, and hope to see the day when other counties will move forward in this direction. Situated as we are, with a diversity of climate, and diversity of soil, from Tennessee to the Gulf, I apprehend it will be very difficult to adopt any provision that would be applicable to all of the counties in this State. So far as my recollection goes, the past history of legislation upon this subject has shown that it has given very little trouble, and I can see very little necessity for this inhibition. Where counties desire to improve the road system, they would have the opportunity to have a different law, because a general law could not be framed to fit the different counties in the State, and I will be constrained to vote against the incorporation of this provision in the Article.

MR. WADDELL—I would ask the gentleman if the power could not be conferred upon each of the courts of county commissioners, in the different counties in the State, to deal with road questions, as they saw proper, by a general law?

MR. HARRISON—So it might, but I doubt very much the propriety of making a legislature out of the average commissioner's court.

MR. CARMICHAEL (Colbert)—I desire to say to this Convention in reference to this provision, that it seems like an extreme proposition. It prohibits the passing of a law "laying out, opening, altering, or working roads or highways." I am one of those who do not believe that the evils of local legislation are as extreme as some of the members of the Convention have asserted. There are some matters that ought to be left open for local legislation. One subdivision has been adopted here that in my opinion is unwise, and that is on the question of locating county seats. I think this entire question is dangerous, and especially this subdivision. There are many counties in the State which have different systems of keeping up their public roads. In Colbert County we have, as this Convention knows, contracted a large indebted-

ness for turnpikes. Our condition is such that we might need special legislation in order to keep up these roads, I suppose there are other counties in a like condition. For that reason it seems to me unwise for this Convention to let it remain and I hope that they will strike it out.

MR. OATES—I have given briefly the reasons that influenced two committees to recommend this provision, and I have no disposition to consume any more time on it. I move the previous question. If the gentlemen do not want it they can vote against it.

MR. WEATHERLY—I hope the gentleman will withdraw the motion a moment.

MR. OATES—I will withdraw it.

MR. WEATHERLY—This question, Mr. President, is of much more importance than the delegates seemed to have thought when they precipitately laid my motion on the table. I think this is one of the subjects that the legislature ought to have the control of by local legislation. I am very much in favor of most of these restrictions on local legislation, but I believe this particular restriction is unwise. This prohibits any local law for the laying out, opening, altering, or working of roads or public highways.

MR. WATTS—If the gentleman will permit a question, can't a commissioner's court lay out, open and alter a road, and why then should the legislature undertake to pass a special law for that purpose?

MR. WEATHERLY—Well, there might be a general law so framed as to authorize the courts of county commissioners to act in the matter.

MR. WATTS—Section 5 provides for it if you will look at it.

MR. O'NEAL—I desire to ask if striking out the word "working" would obviate the objection that seems to be in your mind, and let the Commissioners' Court, as they do now, lay out, open or alter roads.

MR. COLEMAN (Greene)—You might strike out the words "altering or working."

MR. WEATHERLY—I want to call the delegate's attention to the principle that once a highway is dedicated to the public, although it has been done often, I doubt whether the Court of County Commissioners has a right to close it. It is dedicated to the public. It is public property, and I think the Legislature ought to be absolutely free under the Constitution, to close up a highway when it becomes of no further value to the public. There are a variety of circumstances and contingencies which might arise which the Legislature alone ought to deal with. You cannot provide for

them simply by general law, authorizing the Courts of County Commissioners, or the Boards of Revenue to do certain things, because human judgment is so fallible that we cannot think of all the contingencies that might arise in respect to that matter. For that reason, I think that this is an unwise restriction. Certainly, the Legislature has been prudent heretofore with local bills of this character.

MR. WADDELL—I desire to call the attention of the delegate to Section 2443 of the present Code, “The Court of County Commissioners of the several counties is invested with a general superintendence of the public roads within their respective counties, and may establish and change and discontinue old roads, in the manner hereinafter provided.”

MR. WEATHERLY—I know it does, but I doubt if under that statute the Court of County Commissioners could close up a public road, if anybody objected to it. A municipality cannot do it. A town cannot do it. The public acquires a right to the road when it is opened. Every individual composing that public acquire a right to the use of that public road.

MR. WILLETT—And have an easement in it.

MR. WEATHERLY—And they have an easement in it.

MR. WADDELL—Here is what the Supreme Court says as to that: “The power herein exercised is quasi legislative, and other courts will not revise, except in so far as it interferes with property rights.”

MR. WEATHERLY—I understand that is the effect of the statute, but if the gentleman remembers those decisions hold that so far as the municipality is concerned, or the town or city, they cannot close up a highway. A Board of Aldermen, or a Mayor and Aldermen, cannot close it up if any one objects.

MR. BOONE—Is it not a fact that that express point has been decided by the Supreme Court, in the case of the City of Mobile, against the L. and N. R. R., in the 125th Alabama?

MR. WEATHERLY—Certainly it was, and it has been decided in quite a number of other cases, and I think the same proposition applies to the county authorities.

MR. BOONE—I move the previous question on the motion of the gentleman from Colbert.

MR. GRANT—I hope the gentleman will withdraw that. I want to ask a question of the chairman of the committee.

The motion was withdrawn.

MR. GRANT—I want to inquire if the effect of this subdivision here would be to prevent the General Assembly from passing a special road law for any county of the State?

MR. O'NEAL—It does.

MR. GRANT—If that is the case, Mr. President, I am in favor of striking that sub-division out, and for these reasons. The movement for good roads in this State has always met an opposition from the people of the county who have to endure the taxes to get the roads. I remember in our county, and we are one of the counties that, by a system of taxation, has the best roads in that section of the State, and the first bill looking to taxation for the improvement of the roads aroused furious indignation among the taxpayers in the county. A subsequent Legislature, in obedience to that sentiment repealed the law. The Legislature following reinstated it, and now Calhoun County has the best roads in Northeast Alabama by a system of taxation adopted especially as to that county, and there is now no tax that the people of the county pay with more cheerfulness and no people take greater pride in their roads. As has been stated by the gentleman from Lee, different counties need different conditions and laws, and I do not believe that any general law can be passed that will suit all counties alike in this State. One tax for Calhoun would do the work, but the same tax for Cleburne, or any of the adjoining counties would be too much. I believe the Legislature ought to be able to deal with this question, where it embraces as large a territory as the counties of the State. It seems we are cutting off all local legislation entirely. I think the Legislature ought to be left free in some measure for the adoption of local legislation on so important a question as the public roads of the State. For that reason, I want to say that I will vote for the motion to lay the subdivision on the table.

MR. OATES—I yielded to the gentleman from Calhoun. I have a few words to say in reply. I do not agree with the answer that he received, that this provision would prevent legislation such as he stated might be desirable for his county. This is to prevent local acts for the laying out, opening, altering, working roads or highways, but where such legislation was desired by the county, as indicated by the delegate from Calhoun, this does not inhibit that, and he will find that there is another provision here, a proposition that we have not come to yet, and which doubtless will be adopted, providing that where any thing is desired in the way of local legislation which has not been or cannot be properly provided for by a general law, that local legislation may be had to effectuate it. It would be nonsensical to tie up the Legislature so that it never could pass an act in any case. That is not what is intended. It is to stop unnecessary acts. For instance, a member may get up and desire to introduce a bill to exempt A, B and C in his county, from road duty, and, as a matter of courtesy, as the thing is now, he

would be exempted. We do not want to have that kind of legislation. There has been much more of it than gentlemen claim upon this floor, and there would be a general law authorizing the County Commissioners to do all of these things. You will find that under a general law that they would be authorized to do these things, and, therefore, there would be no necessity for special enactment, but in cases where the county desires to make large improvements in its roads, and it cannot be effectuated under the general law, that is the best of reasons and is covered by a proposition which this Convention will soon be called upon to enact, that the legislative hands are to be untied and they may pass a local law to meet such exigencies.

MR. HARRISON—Please point us to the provision to which you refer, leaving it to the discretion of the Legislature to say when they should do that.

MR. OATES—It is in several sections here.

MR. HARRISON—Of this report?

MR. OATES—Yes, and in the Legislative Department, too.

MR. HARRISON—Then under the decision of the Supreme Court, would not the Legislature have the full authority to act upon it?

MR. OATES—They will not have their hands tied as I stated just now. The gentleman's proposition as I said a few minutes ago, ought to have satisfied the gentleman from Lee, and that is, for instance, where a Court of County Commissioners or a Board of Revenue have not the power under a general law to accomplish what is desired in the county, and the general law cannot be framed or has not been framed or enacted, the Legislature is perfectly free to enact a local measure to accomplish what is desired. There is no doubt about that. Now as there is no amendment pending, I move the adoption of this subdivision, it is as good as a motion to lay on the table or anything of that kind because if the gentlemen do not want it they can vote it down. I move the adoption of this subdivision.

MR. BEDDOW—The gentleman from Calhoun moved to lay Section 26 on the table.

MR. OATES—The gentleman did not do so, and I did not yield the floor to him for any such purpose.

MR. GRANT—No, I said I would be in favor of such a motion.

MR. OATES—I move its adoption. If it is not acceptable to the Convention let them vote it down and go on.

MR. DENT—I send up an amendment.

The amendment was read as follows:

Move to amend Subdivision 29, by striking out Subdivision 29 of Article I., now under consideration.

MR. DENT—Mr. President, I think enough has been shown in the discussion of this question to indicate that this is at least, of doubtful propriety. The distinguished gentleman from Montgomery who last addressed the Convention said that this was provided for, as I understood him, in Section 2 of this Article. That is under certain conditions that a county could get a local law. I do not so read that Section. The Section 2 which I will read a line or two from is as follows: “No special, private or local law, shall be passed on any subject not enumerated in Section 1.” It not only prevents the passage of special laws upon all the subjects enumerated, but then it goes further and says that it shall not be done upon subjects not enumerated, except under certain conditions. If we pass this subdivision, it seems to me that it will be in conflict with any effort to have a special law of any kind.

MR. OATES—Will you read this amendment. This is what I was going to offer.

MR. DENT—I will read it. “There shall be appointed in each House of the Legislature a standing Committee on Local and Private Legislation, the House Committee to consist of nine Representatives and the Senate Committee of five Senators. No local or private bill shall be passed by either House, until it shall have been referred to such committee thereof, and shall have been reported back with the recommendation in writing that it be passed, stating the reasons therefor and why the ends to be accomplished cannot be reached by a general law, or by a proceeding in court, or if the recommendation of the Committee be that the bill do not pass, then it shall not pass the House to which it is so reported, unless it be voted for by a majority of all the members elected thereto.”

MR. O'NEAL—I desire to say on behalf of the Committee on Local Legislation that the Committee cannot accept that amendment, but will oppose it, because the effect of that amendment would completely destroy the Article.

MR. HARRISON—I desire to ask permission of the delegate from Barbour to request in connection with the argument he was making when interrupted by the gentleman from Montgomery, that he read the first clause of the Article we are working on.

MR. DENT—Yes, I think that is very plain. Besides we see there is going to be opposition to that. It is speculative to speak of what will be done in the future, and we cannot stand upon that.



As has been said upon this floor, the effort to secure good roads in this State has been commenced, and I think that it is one of the most important things that can be started in Alabama. If we had good roads in every county of the State, I am satisfied that it would increase the value of the lands in every county. I am satisfied that it has done this in Calhoun, as stated by the delegate, and I am satisfied that it is doing it in Montgomery County. We are beginning the movement in Barbour, and I believe if we can succeed in establishing good roads in that county, that it **will increase** the value of our lands, but while I am in favor of striking down so much local legislation, I think this is going too far. I do not believe that this Convention should put so many unelastic provisions in this Constitution. I renew the motion that the Section be stricken out.

MR. O'NEAL—I desire to state to the Convention that this question was considered by the Committee on Local Legislation and there was so much opposition to it in the Committee that we declined to make any report on the subject. We accepted this supplemental report out of deference to the superior judgment and wisdom of the Committee on Legislative Department, but that Committee did not alter our views as to the propriety of that provision. In the county of Lauderdale we have a special law on the subject of roads, which is working admirably, though some amendment to it is desirable. This provision would prevent any amendment to that law. I think the discussion has consumed sufficient time, and I now move the previous question on the subdivision and the pending amendment.

Upon a vote being taken the main question was ordered and upon a further vote being taken the amendment offered by the gentleman from Barbour was adopted.

Subdivision 30 was read:

Providing for the management or the support of any common or private school, incorporating the same, or granting such school any privileges.

MR. MERRILL—I have an amendment.

The amendment was read as follows:

Amend Subdivision 30 by adding at the end thereof, "not now provided for by law."

MR. MERRILL—There are in the State of Alabama several cities which enjoy under the present state of the law what ought to be termed special privileges. Among those cities is the one from which I come. I will be said by some that the adoption of this Section will not impair the right now held and enjoyed by those cities, while it will be held by others that this does and will

impair the right that I speak of. Therefore, the question will be one of construction and for the purpose of putting it beyond that and making assurance doubly sure, I ask that this amendment be adopted. If it be true that the adoption of the Section without being amended will interfere with the rights and privileges that I speak of, then it cannot be gainsaid that those rights can ever be changed by an amendment or affected in any way by a statute. Suppose as in the city of Eufaula, where the school which is located there is supported by money arising from licenses, that the city increases and grows; suppose it is desired that the licenses should be increased far above where they now stand. If that was sought to be done with this section in here as it now stands, we would have to stop right there. I do not suppose it is the desire of the Convention to go so far in the framing of this Constitution, as to tear down or interfere with or cripple the institutions in the State that are now prospering. Among those institutions, as I say, is the school in the city from which I hail, a public school that is supported almost exclusively from the revenue obtained from the traffic in whiskey. The city has built a beautiful school house and it is filled to overflowing, and now they are building an addition to that school house, and it is filled, not alone with children that live in Eufaula, but those who come from the surrounding country, because its doors are open and the tuition is free. It has become an institution in our city that the people regard and consider with the same reverence and respect that they do their churches, and it will be a grievous error if anything were done in this Convention that would impede the progress of that and other schools in this State. This would certainly be a backward step in the cause of education, and therefore I ask the Convention to adopt this amendment. Do not let our anxiety go so far as to local legislation that we will impair or obstruct the progress of these institutions that have been living and prospering on the money derived from license taxes. Not only in the city of Eufaula, but there are other cities in like condition, and with this placed in the Constitution, those institutions will be stricken down. Leave the matter where it belongs, in the hands of the General Assembly. If they see in their wisdom that we are enjoying privileges that ought to be taken away from us let them do so, but do not let a body of men which met for the purpose of making an organic law, put into it any clause, or any paragraph that looks like a striking of local institutions.

MR. SMITH (Mobile)—I am aware of the fact that this provision applies only to the passage of such acts, and I am aware that the passage or adoption of this particular section would not at this time affect the public schools of the city of Mobile. Nevertheless it seems to me that there is a danger in this provision to that system, and I am opposed to the section as originally drafted, on account of that danger. The system that we have in our city

and county, is the result of a growth, under a system of law, as I understand it, which has obtained ever since 1854. From that time down to the present, there have been innumerable legislatures which have made attacks upon that system, and while it is true up to this time the representatives of our county have always been able to satisfy the General Assembly that it was to the interest of the State to permit that system to be maintained in its integrity, yet it is also true that except for the continued watchfulness of the representatives from our city, it might have been undermined in material particulars at any given time, upon a misunderstanding of the system and its operation. It may be that in the future Mobile will fail to be represented by watchful representatives as she has been in the past, and on an occasion of that sort, when the matter is not properly laid before the General Assembly that act may be in some material respects altered or amended. If such was the case, and that alteration or amendment were made it would be impossible ever to redeem her position and get back to the status where she now is and has been since 1854. For that reason it seems to me that this is an extremely dangerous provision to the school system of the city of Mobile, and I oppose it on that ground, and also because of the danger that would threaten every other school system which enjoys a special privilege in the State of Alabama. They will not be stricken down by this provision if it is incorporated into the Constitution, but it will stand as a menace over their heads from the day of its adoption, until the Constitution is altered in that respect. If they are ever stricken a blow in this matter, they will never be able to recuperate, and for my part I desire to see the Constitution in such a condition that if they are stricken a blow by the Legislature, there will be an opportunity for them to be restored to their present status.

In justification to the Mobile school system I want to say that it was the first public school system that was inaugurated in the State of Alabama. It was inaugurated long before 1854, by contributions from the people, maintained by the people at a heavy expense, expensive buildings were erected, and its system has been fostered and protected, and it has been and is today a school system that this or any other State in the American Union might well be proud of. Now, not only is it a public school system for the county of Mobile, but it is conducted so far as the High Schools are concerned, as a Normal School, and its influence is not confined to either the city or county of Mobile, but its doors are open to the child of any citizen in the State of Alabama, to receive without charge or expense of any kind the benefits of education. In recent years we have had a large number of scholars, coming from other counties. They are freely admitted, without charge, and educated, and sent throughout the State of Alabama as teachers in the public schools. I am reliably informed that today there are more teachers in the common schools of Alabama

who receive their education at the High Schools in the city of Mobile, than there are from all of the other Normal Schools in the State combined.

MR. COLEMAN—Does not the argument that you have made, as well as the remarks of the gentleman from Barbour apply with equal force to institutions which might hereafter desire to be incorporated for educational purposes? Why limit it then to schools which now exist? Would it not be safer to strike out the provisions entirely?

MR. SMITH (Mobile)—What the gentleman from Greene says is true, but so far as I am concerned, it has always been a rule of my life not to fight any more men than I have to meet, as I believe such a principle is a bad one. I believe in maintaining the school. I do not believe in putting any restriction upon the right of the State of Alabama to improve her system of education, whether that system is in Mobile or elsewhere, but the gentleman from Barbour has introduced this resolution and it was sufficiently broad to protect the schools in his town and sufficiently broad to protect the schools in my county. I beg this Convention not to strike down or to hamper the efficiency of our schools in Mobile. I do not rise to defend the section in any part or parcel thereof, and to conclude I move to lay the amendment and the subdivision upon the table.

MR. OATES—May I ask the delegate from Mobile to withdraw that for a few minutes?

MR. SMITH (Mobile)—I will withdraw the motion.

MR. OATES—I want to give the Convention the reasons why the committee recommended the provision, and then if the Convention sees proper to strike it out, all right, I will have done my duty. The gentlemen are aware who are opposing it actively, that it is not so framed that this sub-division would have any retroactive effect, and as to the schools of which they speak, they would not be affected at all.

I am not unfamiliar with the system which Mobile has, and has had for so long, that it is almost like the common law. I remember in 1870, and '71, when I had the honor of being a member of the Lower House of the Legislature, that I co-operated with the members from Mobile, Judges Semmes and Harry Toulmin, when an assault was made upon Mobile's city schools, and aided them in sustaining and retaining it as it was. There is no disposition to break it down, but this thing grows and the acts of the Legislature are passed in favor of this locality and the other, granting them peculiar privileges, in many instances, without going into the particulars to enumerate them, to the detriment of other matters and of the school fund.

MR. FOSTER—What was meant by the word “common” there as applied to schools. Does it mean the public schools of the State?

MR. OATES—Yes, that is the meaning.

MR. FOSTER—Don't you think that the Legislature, which supports those schools entirely, ought to have control of them?

MR. OATES—They ought not to grant any special privilege to one over another, but they ought to treat them all alike. At least, that was the view of the committee. It was to secure greater uniformity in education touching the matter of legislation. Not to suppress it, not to injure any particular school, but as this thing seemed to be continually growing, giving particular localities favoritism and advantages not enjoyed by people generally, and it ought to be stopped as far as future legislation is concerned. I have no idea that any member of the committee intended anything of detriment whatever to the existing schools, but only that that practice should be stopped and not indulged in by any other Legislatures. That was my view of it, and I think I state the view of the committee correctly.

MR. BOONE—Governor, I will ask you if, under this Sub-division 30, as argued by my colleague, Mr. Smith, if the Legislature should repeal the Act of 1854 with reference to the schools of Mobile County, could the General Assembly thereafter, with that provision in the Constitution, renew or re-enact the present system?

MR. OATES—I think they could not pass any original law, if it was once repealed, though the enactment of this provision, nor its absence, would prevent the General Assembly from repealing the law. It does not affect that question at all.

MR. MACDONALD—I will ask the chairman of the committee whether it was not the purpose of his committee to direct this sub-division merely against private schools as contradistinguished from public schools. When it speaks of common schools or private schools, it speaks of schools organized and started by private individuals. Is it not to prevent the incorporation or granting of special privileges to such private schools as contradistinguished from the public schools of the State?

MR. OATES—That was one consideration.

MR. MACDONALD — That was my understanding when I voted for it.

MR. OATES—I will say that my friend was on the committee and participated in the discussion and understands it.

MR. LONG (Walker)—I would like to know why you do not put normal colleges and universities in as common schools?

MR. OATES—I cannot give you any reason. I do not know why they are not in there. They are generally established under charters, like other schools that have been mentioned, and this provision was not intended to have any retroactive effect at all. I do not care to say anything more, but I desire to yield the floor to the gentleman from Mobile, who withdrew his motion at my request.

MR. WHITE—I desire to ask the gentleman if this is adopted will it not give Mobile and Eufaula an exclusive right along that line of special privileges that no other town or city can ever get. Those that have special privileges now, will they not continue to possess the special privileges until the Legislature shall repeal the law, under this provision, and at the same time will it not prevent any other town or city from securing a similar privilege?

MR. OATES—That was the leading object of the committee, to put a stop to it where it is.

MR. WHITE—I would like for it to go on a little longer, until it strikes my end of the country.

MR. OATES—The delegate from Mobile yielded to me, withdrawing his motion to table, and I now yield the floor to him.

MR. SMITH (Mobile)—If the gentleman from Jefferson will renew the motion, I will withdraw it.

MR. WHITE—I will do so. I am in favor of tabling the proposition and will gladly make the motion, but I am in favor of it for a different reason than those who have favored it heretofore. I am in favor of it because I do not think that the schools that have special privileges at the expense of the State ought to be left permanently to enjoy those privileges when other cities and towns can never have the opportunity of enjoying them. In other words, if Mobile is to enjoy the entire amount of liquor licenses collected in that city and apply them to her local schools, and if Eufaula is allowed the same privilege, or any other town or city is allowed that privilege, just as soon as we can do it, I want to get Birmingham in that class. I do not see any reason why we should not be put in that class, and I would like to see the city of Montgomery enjoy the same privileges. I believe in schools as much as any delegate upon this floor, but I believe in schools being maintained upon terms of equality and right, and for my life I cannot see why the richest city in Alabama, the city of Mobile having more wealth per capita than any other city in the State of Alabama, should retain for its local schools the exclusive use of the liquor licenses derived in that city, when every other city

in the State, with a few exceptions, pour it into the general fund. They say that it ought to be left to the Legislature. I say, Mr. President, that if the Legislatures had the opportunity since 1854, and have not acted up to this time, it is time that the Constitution makers should take charge of it.

MR. OATES—I will say that instead of going backward, that the Legislature has been progressing in that direction, and extending these privileges to one place after another.

MR. WHITE—Yes, and it is perfectly right, if they are to enjoy it, then the others ought to be allowed the same privileges. That would equalize it possibly to some extent.

MR. KYLE—I would like to ask the gentleman if it is true that a great wrong has been done the people of the State by these special privileges, why should not this Convention abrogate those special privileges and put the people upon a plane of equality?

MR. WHITE—That is what I advocate, and I say that I am in favor of striking down this provision, because it will continue to give these cities these advantages and these special privileges, and would never allow any other city to go in that class.

MR. KYLE—Is it not best to wipe out these privileges and start new and give everybody a fair chance.

MR. WHITE—Exactly, and when we get there I am going to be there with you, but I am talking about the question which is before the Convention. I believe in the equality of things, and I do not believe there should be special privileges for any city or any town or any man or any set of men.

MR. O'NEAL—If the Convention had not stricken out the provision incorporated in the Article on Local Legislation, prohibiting any town, or city, from being granted any special privilege or franchise, would we not have reached Mobile?

MR. WHITE—Well, I doubt that because this Constitution will only act upon future legislation.

MR. O'NEAL—We would have prevented it in the future.

MR. WHITE—That is the trouble, but if Mobile is going to enjoy it, I want Montgomery and Birmingham and Anniston and every other city in Alabama to enjoy it.

MR. O'NEAL—I agree entirely in your view and will support any amendment that will reach that result.

MR. WHITE—That is the reason that I am opposed to this section. If it passes and becomes a part of the organic law, then we are left in a position where we can never enjoy the privileges which they enjoy.

MR. O'NEAL—Why do not you amend this section so as to reach the end you seek?

MR. WHITE—I think the best plan is to lay the section on the table, and then when we get to the other proposition, to lay that out as well.

MR. PRESIDENT—Does the gentleman make that motion?

MR. WHITE—Yes, sir; I agreed to do it and it affords me a very great pleasure to do so.

MR. KYLE—Will the gentleman withdraw and let me introduce an amendment providing that all special privileges which are now enjoyed are hereby annulled?

MR. WHITE—I think that will come up better at a later time. I do not think that this is a proper place for that.

Upon a vote being taken the motion to table was carried.

Subdivision 31 was read as follows: Granting any land owned by or under control of the State to any person or corporation.

Mr. Watts offered an amendment which was read as follows: By adding the following: "Provided, rights of way over public lands may be granted."

MR. SAMFORD (Pike)—I rise to ask the gentleman a question. Isn't that already the law. Haven't we got a general law that permits a right of way over public lands?

MR. WATTS—Here is an inhibition against granting any land owned by or under control of the State for any purpose.

MR. SAMFORD—But haven't we a general law providing a right of way over the lands of the State?

MR. WATTS—Yes, sir; and consequently this section would not contravene the other. If you put it in as it is it will be inconsistent.

MR. LONG (Walker) — Would not that prevent the State from dealing in its coal lands? The State has some valuable coal land and would it not prevent the State from leasing those lands?

MR. OATES—Not at all. The State does not own the coal lands, but herely controls them as trustee.

MR. O'NEAL—Would it not be better to use the word donate. You grant land by deed.

MR. OATES—I have no objection to that word.



THE PRESIDENT — Does the gentleman ask unanimous consent to strike out the word "granting" and insert the word "donating?"

MR. OATES—Yes, sir.

There being no objection the amendment was allowed.

MR. WATTS—I desire to withdraw my amendment with the consent of the Convention.

There being no objection the amendment was withdrawn.

MR. BURNS—I offer an amendment as follows: Amend subdivision 31 by adding the following: Except the biennial grant of State lands to Emma Sansom Jackson, as now provided by law.

MR. BURNS—I don't suppose there will be any objection to that amendment and that it will be unnecessary to make any remarks. If there be any opposition to the amendment, I will take great pleasure in referring the Convention to the distinguished ex-attorney general who is authority on the subject of heroism.

MR. OATES—The amendment has no operation. The grant of land by the State to Emma Sansom, the maiden name of that lady, has never been complied with, because the State has not got the land. They cannot find the land to give it to her. I am very sorry to say and this has no retroactive effect, and would not affect that at all, and therefore, I move to lay the amendment on the table.

MR. BURNS—Will the gentleman withdraw one moment, in order that the gentleman from Tuscaloosa may say a few words upon this subject?

MR. OATES—I withdraw the motion, Mr. President.

MR. HEFLIN (Chambers)—I understand that the motion is withdrawn—

MR. BURNS—I hope that the gentleman from Tuscaloosa will explain—

THE PRESIDENT — Does the gentleman from Chambers desire to debate this question?

MR. HEFLIN (Chambers)—The people of our State know nothing of the intense suffering of the majority of the delegates in this Convention. Their suffering from heat, and suffering from the continued flow of impassioned speech. We are chained here by the side of the dashing torrents of unrestrained and tear-stained eloquence, Mr. President, and under its mighty power, the delegates of this Convention are physically weakening and withering day by day. We ask humbly that the judgment of the

people of the State be suspended, and that sympathy be allowed to shed a tear. Unless the people were here, Mr. President, and could see as we see, feel as we feel, and suffer as we suffer, they cannot know our hardships and our struggles, but they cannot be here, Mr. President.

The dew drop that laughs on the lily's cheek, can never know the story of the sea; the violet that blooms by the babbling brook, knows nothing of the ebb and flow; the "joree" that bounds among the brier blossoms knows nothing of the eagle's mountain dream. There are times when we would gladly exchange places with the dew drop, swop places with the violet, exchange places with the "joree" in the brier patch, and from the city's busy hum, and from the chain of debate break loose, and go where the cat can climb the catnip tree, and the gooseberry clings to the goose; where the partridge drums his drum, and the wood chuck his wood; where the dog devours the dogwood bloom, in blissful solitude.

There are times when delegates are seated immediately in front of a speaker, when there is no possible way of escape from his seat, and he must sit, look up and listen throughout the length of the fence corner debate. On yesterday I saw a sad, sad sight. A delegate fastened down immediately in front of an impassioned, earnest speaker, there was no way of escape, he had to sit and listen to the speech and at the conclusion of it he expired. Slowly and sadly the delegate fell, he squirmed, he wept, and he sighed, and his strength being gone he broke the spell, folded his arms and died. Mr. President, it was not shortness of breath that took my friend away, but it was the talking of a man entirely to death by a delegate that hot day.

I therefore, Mr. President, move to lay the amendment on the table.

Upon a vote being taken the motion to table was carried.

MR. BURNS—I desire to call the Chair's attention to the fact that I voted aye for the purpose of moving a reconsideration.

MR. OATES—I now move the adoption of the subdivision as amended.

Upon a vote being taken a division was called for and by a vote of 73 ayes to 9 noes the Section was adopted.

The clock striking 1, the Convention thereupon adjourned until 3:30 this afternoon.

## AFTERNOON SESSION

The Convention met pursuant to adjournment, there being 96 delegates present upon the call of the roll.

Leaves of absence were granted as follows: Indefinite leave for Mr. Locklin, on account of sickness; Mr. Weatherly of Jefferson, for this afternoon; Mr. Sollie of Dale, for today; Mr. Taylor, for today.

MR. LOWE (Jefferson)—I ask unanimous consent to introduce an ordinance.

Leave was granted, and the Clerk read the ordinance as follows:

Ordinance No. 417 by Mr. Lowe (Jefferson).

An ordinance to amend Section 13 of an ordinance entitled "An ordinance to create and define the Executive Department."

Be it ordained by the people of Alabama in Convention assembled: That Section 13 of an ordinance heretofore adopted by this Convention and entitled an ordinance to create and define the Executive Department, be amended so as to read as follows:

Sec. 12. Every bill which shall have passed both Houses of the General Assembly shall be presented to the Governor. If he approves, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large upon the Journal and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that House shall agree to pass the bill it shall be sent, with the objections, to the other House, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that House, it shall become a law; but in such case, the votes of both Houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered on the Journals of each House respectively. Any bill which shall have been vetoed by the Governor may be amended and again presented to the Governor for his approval; in which event the provisions of this section shall in all respects apply thereto. If any bill shall not be returned by the Governor, Sundays excepted, within six days after it shall have been presented, the same shall become a law in like manner as if he had signed it, unless the General Assembly by their adjournment or recess, prevent its return, in which case it shall not be a law; but bills presented to the Governor within five days before the adjournment of the General Assembly may be approved by the Governor at any time within ten days after the final adjournment, if approved and deposited with the Secretary of State within that time. Every vote, order or resolution to which concur-

rence of both houses may be necessary, except questions of adjournment, and the bringing on of elections by the two Houses, and amending this Constitution shall be presented to the Governor; and, before the same shall take effect, be approved by him; or being disapproved, shall be re-passed by both Houses according to the rules and limitations prescribed in the case of a bill.

Referred to the Committee on Executive Department.

MR. HEFLIN (Randolph)—I desire to make a report from the Committee on Schedule, Printing and Incidental Expenses.

The Clerk read the report as follows:

MR. PRESIDENT — The Committee on Schedule, Printing and Incidental Expenses have instructed me to make the following partial report, viz.:

The Committee has audited the accounts hereto attached and find that the State of Alabama is indebted to the Brown Printing Company, of Montgomery, Ala., in the sum \$176.90 for printing.

We find that said State is indebted to J. W. Terry of Montgomery, Ala., for the use of a typewriter from May 24 to June 24, in the sum of \$5.

We find that said State is indebted to Ed. C. Fowler Co., of Montgomery, Ala., in the sum of \$8.60.

We find that said State is indebted to J. W. Terry of Montgomery, Ala., in the sum of \$16 for services rendered Rules Committee up to May 27, 1901.

We find that said State is indebted to W. W. Haygood of Montgomery, Ala., in the sum of \$1.25.

We find that said State is indebted to Miss Eunice Richards for typewriting done for Committee on Preamble and Declaration of Rights in the sum of \$7.50.

We find that said State is indebted to Marshall & Bruce Co., of Nashville, Tenn., in the sum of \$48.25.

We find that said State is indebted to Ed C. Fowler Co., of Montgomery, Ala., in the sum of \$4.75.

We find that said State is indebted to Jos. E. Longstreet in the sum of \$8 for services rendered to the Committee on Suffrage and Elections, in making fifty-four copies of the Report of said Committee.

We find that said State is indebted to (Miss) Georgia Connelly in the sum of \$6 for stenographic work done for Committee on Suffrage and Elections.

All of the above amounts are for printing done, for articles furnished State of Alabama for use of Constitutional Convention, and for services rendered to Committee of said Convention, and all of the above amounts are itemized as shown by bills hereto attached. Total amount (\$282.25) two hundred and eighty-two and 25-100 dollars, and we recommend the payment of the same, all of which is respectfully submitted.

John T. Heflin.

Chairman Committee on Schedule, Printing and Incidental Expenses.

MR. HEFLIN—I move that the report take the usual course, lie on the table and be printed.

The motion was adopted.

MR. PROCTOR—The Committee on the Journal asks unanimous consent to make a favorable report on Ordinance No. 409.

Leave was granted, and the Clerk read the report as follows:

Ordinance No. 409, by Mr. Carmichael (Colbert):

To provide for the filing and arranging of the papers and documents pertaining to the Constitutional Convention; also to provide for the delivery by the Secretary of a correct copy of the Journal of the Convention to the Public Printer with a proper index thereto; also to provide for the superintendence of the printing of said Journal by the Secretary; also to make appropriations for the compensation of said Secretary for his services.

Be it ordained by the people of Alabama in Convention assembled, That the Secretary of this Convention shall within forty days after its adjournment, file, label and arrange the Journal of said Convention and all the papers and documents pertaining to said Convention in the office of the Secretary of State. He shall also copy and deliver to the Public Printer the Journal of said Convention with a proper index thereto within said forty days. He shall also superintend the printing, and read and correct the proof of said Journal.

Be it further resolved, That for the services herein required of said Secretary he shall receive the sum of five hundred dollars (\$500.00) and upon the production by the said Secretary of the receipt of the Secretary of State for such papers, Journal and documents required to be filed and labeled together with the receipt of the Public Printer for a copy of the Journal of the Convention, the State Auditor shall draw his warrant upon the State Treasury for said amount herein provided, and the said warrant shall be paid by the State Treasurer.

Be it further resolved, That there is hereby appropriated out of any money in the State Treasury not otherwise appropriated,

the sum of five hundred dollars (\$500.00) for the compensation of the said Secretary for the said services herein required of him.

THE PRESIDENT—The ordinance will lie on the table and be printed.

THE PRESIDENT—The special order will be the consideration of the report of the Committee on Legislative Department to be considered in relation with section on Local Legislation. The Convention had already reached Subdivision 32: "Remitting fines, penalties or forfeitures."

There being no objection or amendment, Section 32 was adopted.

The clerk here read Subdivision 33.

33. Providing for the conduct of elections, or designating places of voting, or changing the boundaries of wards, precincts or districts, except on the organization of new counties.

MR. THOMPSON (Bibb)—I offer an amendment to strike out the words "providing for the conduct of elections, etc." Under that, the Legislature could not pass a local law to provide for the vote of a county as to whether they should issue bonds, or a municipality as to whether they should have a stock law, dispensary, prohibition or local option or anything along that line, and I do not see how it would be possible for the General Assembly to provide for those cases under a general law, and therefore I hope that the amendment will be adopted and those words stricken out.

MR. OATES — I have great respect for the opinion of my young friend, the delegate from Bibb, but I cannot see the force of the amendment to strike out "Providing for the conduct of elections or" because then if the amendment be carried, striking out providing for the conduct of elections locally and exceptions to the general rule. This of course prohibits the passage of any local law providing for the conduct of elections to designate the place of those voting or changing the place of voting, except upon the organization of new counties. If there be good reasons for the amendment of my friend, I would not object to it, but I have not seen one of them yet in his statement. I don't know why it is he wants to knock out providing for elections of a local character, it is not intended to interfere with general provisions for elections at all.

MR. HARRISON—I would like to know from the Chairman of the committee, the necessity for this provision. Under the general law it provides that they should be all elected.

MR. OATES — Of course, and the Constitution in another part will provide—the old one had it no doubt—that laws governing elections shall be general. This has no field of operation ex-

cept to prevent local legislation, to regulate elections in the locality different from the general law, and it provides not only for the conduct of elections, but changing the boundaries of precincts, etc., except the organization of new counties—that part is not objected to nor proposed to be amended. I am not able to see the reason for the amendment, therefore I don't think it ought to be adopted.

MR. SAMFORD (Pike)—I desire to say to this Convention that I see this thing like the gentleman from Bibb. It occurs to me that if this subdivision prevails in its present form without the amendment, that the Legislature would be prohibited from providing for any election for local matters.

MR. WALKER (Madison) — Would the gentleman permit me to make a suggestion? Would there be any difficulty at all in providing for holding local elections, etc.?

MR. SAMFORD—Well, it is so much easier, Mr. President, whenever the Legislature is providing for the holding of an election, for them to provide for the holding of an election at that time, than it would be to pass a general law that would be applicable to every phase of local matters, I do not see any necessity for this section.

MR. O'NEAL—Will the gentleman permit an interruption? If you wish to pass a special law, could you not incorporate into it a provision as to elections?

MR. SAMFORD — I doubt whether you could under this clause.

MR. O'NEAL—Certainly, if you pass a law about whiskey you would have the right to provide for an election in it.

MR. SAMFORD—I may be in error about it, but it occurs to me you could not do it with a direct prohibition in the fundamental law of the State. Suppose a county wanted to issue bonds. You have provided that it shall not be done without an election, and yet you go on here and say if the Legislature fails to pass a general law covering all of these local elections that then there would be no way of fixing by law for a county to vote for the issuance of bonds, or a town, municipality or anything else.

MR. OATES—You are mistaken in that, because no report has been made yet that does not contain a clause that if these things are not provided for by general laws that the Legislature has full power to pass local laws.

MR. O'NEAL—That provision for bonds requires a general law on the subject of elections, provides a law before bonds are issued, and after the election authorizes the issuance of bonds. The Legislature can pass a special law authorizing it.

MR. SAMFORD—For that or for any other local matter, and it is at least susceptible of these constructions, and, therefore, I do not see any necessity for putting a clause in the Constitution that is susceptible of two constructions where injury might result from it. I did not desire to cut off debate, and, therefore, did not move to lay the matter on the table for that reason, if anybody wishes to discuss it.

THE PRESIDENT—The question is on the amendment offered by the gentleman from Bibb. Is the Convention ready for the question?

The previous question was ordered, a division called for and, by a vote of 40 noes to 32 ayes, the amendment was defeated.

MR. OATES—I move the adoption of the sub-division.

MR. PARKER (Cullman)—I desire to offer an amendment.

The clerk read the amendment as follows:

Amend Sub-division 33 by adding to the same the word, "and changing the lines of old counties."

MR. PARKER—That is offered for the reason that in the report of the Committee on State and County Boundaries we have a provision for a special election upon boundary lines of old counties, and this is so that there will not be a conflict.

MR. OATES—I have no objection to the amendment, excepting that I see it is provided for in another place. I have no objection to it at all, and I move the adoption of the Sub-division as amended.

A vote was taken, and the sub-division as amended was adopted by 53 ayes and 12 noes on a division.

MR. CARMICHAEL (Colbert)—I make the point of order that no quorum voted.

THE PRESIDENT—The chair will count a quorum if necessary—there is more than a quorum in the House.

MR. O'NEAL—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. O'NEAL—Is there any rule requiring a quorum to vote?

THE PRESIDENT—The chair thinks not, providing a quorum be present.

MR. O'NEAL—Does the chair count a quorum?



THE PRESIDENT—The chair will count the members present and not voting.

MR. COBB—I wish to make a motion to reconsider the vote by which the amendment of the gentleman from Cullman was passed. Let it go over until tomorrow. On the whole section as amended.

THE PRESIDENT—Would you prefer it to go over until tomorrow or to suspend the rules and consider it now?

MR. COBB—Let it go over until tomorrow.

The clerk read Sub-division 34 as follows:

Thirty-fourth — Restoring the right to vote to persons convicted of infamous crimes or involving moral turpitude.

MR. WATTS—I have an amendment.

The clerk read the amendment as follows: Amend Subdivision 34 by inserting "crimes" between "or" and "involving."

MR. OATES—That is an omission in the printing and the amendment is entirely proper.

A vote being taken, Sub-division 34, as amended, was adopted.

The clerk read Sub-division 35 as follows:

Thirty-fifth—Refunding money legally paid into the State Treasury.

MR. PILLANS—I should be glad to hear from the gentleman who reported this. It strikes me that that is rather a dangerous section. For example, the Legislature that sat—not the last one, but the one prior to that—there was attempted to be passed a license law. It was not lawfully passed, but it went into the printed statute books and the money was collected wrongfully and paid by the Probate Judges into the State Treasury. The State of Alabama could not have restored to the citizens the money which have been wrongfully extracted from them had this clause been in operation at that time.

MR. WATTS—Could not the Legislature have passed a general law that wherever taxes had been paid in the manner described that they could be returned by the different Probate Judges?

MR. PILLANS — It may be that this is confined to local laws. I just asked for information.

MR. FITTS—I think this section is too far-reaching. There are times, it seems to me, when special bills could be enacted to pay money out of the treasury when money has gotten into the

treasury technically in an illegal way, and there is one pending now which ought to be expected in this stanza or paragraph. It is a well-known fact that there is now in the Treasury of the State the sum of \$56,000 which was paid in there by the Sloss-Sheffield Company in purchase of certain University lands, and that the controversy between that company and the University has been settled, and that a part of the settlement is that that money shall be by special act of the legislature paid back to the Sloss-Sheffield Company. The very fact that we are now face to face with one state of facts which will require a payment out of the State treasury by a special act, shows us that circumstances may arise of a similar nature in the future. Occasion may arise when money will be paid into the State treasury which ought to, and will have to be in all fairness and justice paid back, and such being the case, I do not think this Section, sweeping as it is, should be put into the fundamental law. I would like to hear from Mr. Davis, a Trustee of the University, if any provision has been made to get that money out of the treasury except by special act?

MR. DAVIS—I think not.

MR. FITTS—And will it not require a special act of the legislature to get it out?

MR. DAVIS—It has already been passed.

MR. PETTUS—I will state to the gentleman that the act was passed by the last legislature.

MR. FITTS—My information was that the case had been settled, but if it has been passed the mere fact that we were so recently face to face with a situation of that kind shows that there may be circumstances come about in which such things are important and necessary.

MR. OATES — I think the delegates are very much under misapprehension about this provision if they will only think about it for a moment. "Refunding money legally paid into the State treasury." Now, in the case stated by the delegate from Tuscaloosa—I do not know because I have never investigated it—but my information was that that money was paid in there before the transaction was entirely consummated, and that it never was paid to the credit of the State in the ordinary way, but laid there for the completion of the transaction. But without regard to that, if gentlemen will think for a moment, taxes or any money legally paid into the treasury shall not be taken out. Why, sir, if money be collected under a lawful tax law and paid into the Treasury, it don't leave a semblance of a doubt that there is no obligation on the part of the State to pay back that money at all, and ought not to be, and in the case supposed by my learned friend, or stated by him, of money wrongfully collected by probate judges from

people who paid it over to the probate judges acted in good faith no doubt in paying the money into the treasury, it was money illegally collected, and there is nothing in this provision to prevent the legislature from passing laws to refund or pay back money that is illegally collected. It is only when it is legally collected and paid into the State treasury that it shall not be refunded.

MR. COLEMAN (Greene)—Money collected under the law—isn't it legally collected at the time until the law is declared unconstitutional—how is that?

MR. OATES—No, it is collected under a law, but that law ultimately fails, and that reaches back and shows it was illegally collected. The gentleman cannot deny that proposition?

MR. COLEMAN—The proposition is when that comes up in the probate court, they make the assessment, judgment is rendered, taxes are paid under the law as it is at the time, and there is a valid decision by the court.

MR. OATES—Yes, very often decisions of that kind made which fail on appeal to the court of last resort, are held to be no law—that is an illegal collection.

MR. COLEMAN—I don't know about that.

MR. OATES—While it was legal at the time and the officers were not trespassers, still it was not legally collected, if the law be subsequently declared to be no law, and this will not prevent the legislature in any case where money is illegally paid into the treasury, and that reaches back to where it was illegally collected. If such be the case, the legislature with this in force is perfectly capable of passing a law to refund it, but if legally collected—suppose in the case just now stated by the delegate from Greene that the law is upheld—is there any reason then, why it should be paid back?

MR. COLEMAN—Permit me to ask a question again.

MR. OATES—Certainly.

MR. COLEMAN—To make the question plain: The circuit court has jurisdiction of the law, it declares the law to be constitutional and money is collected under that law. If there is no appeal, it is legally collected because it is under a judgment of a court that had jurisdiction. If it stops there, it is legally paid. If that law is declared unconstitutional subsequently, what are you going to do?

MR. OATES—It does not change the proposition I asserted at all. Although it is so far legally enforced that the officers are not trespassers, would not be guilty of damage of responsibility in damages for a trespass, yet when the law is subsequently de-

clared to be unconstitutional, it is no law, and never was any law, and it naturally goes back that this money was illegally collected by the man coerced by a judgment which would not have stood before the court. The Legislature in such case, even where this is adopted, is perfectly competent to refund that money.

THE PRESIDENT—The gentleman from Montgomery has consumed his time.

MR. OATES—I was going to yield to the gentleman from Mobile.

MR. PILLANS—I wish to ask a question of the gentleman.

THE PRESIDENT—Proceed and ask the question.

MR. PILLANS — Is there not a plain distinction between money illegally collected and money lawfully paid over. That was the distinction that I sought to draw. Where money was lawfully paid over to the Probate Judge it might be an illegal collection, but when paid to the officers of the Treasury, was it not a legal payment?

MR. OATES—I will answer that by saying I don't think any court on the facts would so hold.

MR. HARRISON—I think the question of the delegate from Mobile very pertinent, and I think the argument of the gentleman from Montgomery who argued that if money was legally collected you would have to make a decided difference from the subdivision as drawn when he uses the words legally paid into the State Treasury. But my objection goes further than any technicality, even if it were amended. I don't believe that this subdivision should be grafted into the Constitution.

I am heartily in favor of all reasonable curtailments of local legislation, but there is an article in our present Constitution, and one already adopted by this Convention forbidding the State of Alabama from ever being made a defendant in any suit. Cases frequently occur in the Legislature where a Chancery Court upon hearing would refund money although legally paid. I remember a case last session where representations were made by the officers of the State as to the sale of mineral lands, and these statements were false. The papers had all passed. The facts were presented to the Legislature, and there was no Chancery Court but would have refunded the money, and the Legislature of Alabama is the only representative of the State to pass on these cases. They say in one Section of the Constitution that Alabama shall not be sued.

MR. OATES—Would not that be a legal collection?

MR. HARRISON—Certainly it would be legally collected. As well said by the gentleman from Greene in his inquiry, and also by the gentleman from Mobile, as long as a court of competent jurisdiction hold the tax claim valid, that it was legally collected, certainly when paid over to the Probate Judge or other officer, it was legally paid into the Treasury, and under the language of the subdivision itself, it could never be taken out by any local law, and consequently we do not wish to place in the Constitution an inhibition that will require the Legislature to pass on claims. How can they classify all claims illegally paid into the Treasury and pass a general law to cover such cases? I think it would be wrong and a hardship, and this Convention ought not to say to its citizens or anybody else dealing with the State of Alabama, independent of the legality of it, that if they have any equitable claim on the State of Alabama, holding as we do an inhibition in the Constitution that the State shall not be made defendant in any suit, we should at least have some tribunal to pass upon the equity of claims made for money paid into the Treasury.

MR. COLEMAN—I take issue with the delegate from Montgomery in his exposition of the law. There is no doubt in the world it is a principle of the law that if a question arises between two parties, and it is tried before a court of competent jurisdiction and judgment rendered, that that is final unless it is appealed as between those parties, and if subsequently the same question arises between different parties and the question is appealed to the Supreme Court between the latter parties and the Supreme Court holds that the law is unconstitutional, the first litigant in the first instance has no recourse—he has adjudicated.

MR. OATES—May I interrupt you just there. I never said that he had any, but in the form of law wasn't it illegally collected?

MR. COLEMAN—No, sir; legally done and so pronounced by a legal court. I go further. There are cases, an abundance of them, where rights have been adjudicated and so held by the Supreme Court of the United States, and the question would come up subsequently between other parties and a new phase of the case be presented to the Supreme Court, and the Supreme Court would reverse its decision and declare the law unconstitutional that had been declared constitutional. It was legally paid. Any money is legally paid that is paid under a court of competent jurisdiction unreversed, so it is dangerous to put this proposition here.

MR. VAUGHAN (Dallas)—I move to lay Section 25 on the table.

Motion to table was carried.

MR. BLACKWELL—I desire to offer an additional subdivision. Amend Section 1 of the report of the committee after line 14, Subdivision 35, "declaring who shall be liners between counties."

MR. OATES—We have not reached that subdivision.

MR. FITTS—I raise the point of order that the proposition he suggests is an independent subdivision and can only come up when these subdivisions have been considered.

MR. OATES—We are to go back to Subdivision 26, as I understand.

MR. BLACKWELL—This is an additional subdivision to this section.

THE PRESIDENT—It seems to the Chair that it would be in order at this time.

The clerk read the amendment as follows: Amend Section 1 of report of Committee on Legislation after line 14, Subdivision 35, declaring who shall be liners between counties.

THE PRESIDENT—That should be addressed to the report of the Committee on Local Legislation, that is the report under consideration.

MR. WILLIAMS (Marengo)—There is a subdivision 36, subdivision 26 was subdivided into 26 and 36.

THE PRESIDENT—No, it was withdrawn temporarily by the committee and not numbered at all. Subdivision 35 was stricken out.

MR. WATTS—The Committee on "Harmonics" will straighten them out, all right.

THE PRESIDENT—The question is on the adoption of the amendment to be added as Subdivision 36.

MR. JONES (Montgomery)—I would like to inquire from my friend from Morgan how you are going by a general law to provide for liners?

MR. BLACKWELL—This is a prohibition to stop local legislation if it cannot be done by a general law the Court of County Commissioners is a better place to have this done than the Legislature.

MR. HARRISON—I call for the reading of the amendment.  
The amendment was read again.

THE PRESIDENT—The question is on the adoption of the amendment.

A vote being taken, the amendment was adopted.

MR. DAVIS (Etowah)—I desire to offer an amendment.

The Clerk read the amendment as follows: Amend Section 1 by adding after Subdivision 36 "37. Regulating the catching or hunting of game."

MR. DAVIS—I wish to say that I am in thorough accord and harmony with the effort to restrict local legislation. I have noticed numerous statutes about game; every county in the State seems to have a different law about it. There is no reason why there cannot be framed a general law to make all the counties in the State alike. This general law may be applied to counties, thereby putting a check on local legislation.

MR. O'NEAL—I call for a reading of the amendment.

The amendment was again read.

MR. O'NEAL—I desire to say that the Committee on Local Legislation considered that section very carefully and rejected it for this reason, that we recognized that it is different in different counties. Some counties have no game, and some have a great deal of game, and that to secure a general law would be a matter of great difficulty. We thought it proper in counties where they desired to protect game to allow them to have local laws. There are some communities in a county desiring game laws while probably the balance of the county are indifferent on the subject, we thought it proper if there was a community that desired to protect the game to allow them to do it, other counties having no game would oppose any law of that sort.

MR. COLEMAN—The remarks of the chairman of the committee are very pertinent. In many of the counties there are communities, certain localities, where game abound, and it is preserved there. People who reside in the county or outside the county would destroy the game there if permitted to interfere. You cannot get a general law that would protect beats and parts of beats and certain boundaries where the game is preserved, and I think it would be unwise to interfere, particularly where people have incurred great expense in securing and providing for the maintenance and protection of game, I think the committee did wisely in leaving it out, thought I did not know that they had it under consideration.

MR. HARRISON—Does not the time for killing game vary in the different parts of the State?

MR. COLEMAN—Of necessity. You would be authorized to hunt certain game in certain days and months—quail at one time, wild turkey at another time, and deer at another time, and in different localities of the State they come earlier and later. It

seems to me to be almost impossible to have a general law which would apply to communities. If you have a State law, you will have to go to the expense probably of having a game ordinance. We have not reached that stage yet. I would be glad if the amendment were not adopted.

MR. ESPY—To my mind, the amendment is one of the best provisions contained in this section of the Article. It is not sought here to prevent legislation for the protection or for the catching of game, that is not it at all. The proposition involved in the gentleman's amendment simply says that it shall not be done by a local law. If this Convention votes down that amendment, it will put itself in a remarkable position. It has already gone on and said that they would not pass any local laws establishing school districts in which children could go to school.

MR. COLEMAN—Have you any game laws in your county and community?

MR. ESPY—No, sir.

MR. COLEMAN—You know nothing about it, then.

MR. ESPY—I know something about game laws, perhaps I know too much about it is the reason I insist upon this amendment going in.

MR. O'NEAL—We examined very carefully the provisions of every Constitution in the United States on that subject, and we did not find that provision in a single Constitution, because all the States recognized the fact that that was a matter for special legislation.

MR. ESPY—I hope the gentleman did not go through books and hunt for what other States have done, and failing to find it there, not put it into this Constitution. We certainly ought to have some originality ourselves, and we certainly ought to be able to find something or know something except what you get by the example of others. As I was going on to say, this Convention has decided that no district in which children go to school shall be established by any special law. They have said that no special law shall be enacted prohibiting or permitting stock to run at large. Now, then, if they vote down this resolution, they will say that the birds and game of this country are of more importance and entitled to more protection under the laws of this State than the children and the stock. That is the inevitable position to which these gentlemen have been driven.

MR. DAVIS—I want to suggest that the title of one the acts of the last Legislature was "to regulate the hunting of the opossum in Pickens County."



MR. ESPY—Mr. President, if this Convention were to get the game that was passed by the last Legislature, I think that that would in itself be a complete answer. I think that game law is known as the Wallace Law, from Madison. I dare say that that law itself has cost the State of Alabama \$200 or \$300, that one law, and it has never been worth 5 cents to anybody and it never will be. Now, if people want to have game laws, provide by general laws by which the Commissioners' Court or the Board of Revenue of the various counties can enact bird laws, live stock laws, and establish school laws and things of that kind.

MR. BAREFIELD—I would like to ask if it is not a fact that this thing of opossum hunting in the fall is not one of the greatest curses that the farmer has? That it results in burning up his fancies, and everything else?

MR. ESPY—No, that is taking too narrow a view of the matter. I am sorry for a man whose soul gets so small that he objects to a nigger catching an opossum on his plantation. That is entirely too narrow a view to take of the matter. That is all I desire to say.

MR. CUNNINGHAM—I am heartily in favor of this amendment, and in support of my position will give a little personal experience. When I returned home to my county in 1897, among the many sins which I had to answer for was a game law for Jefferson County. I denied that there was any such statute passed by the General Assembly, as I thought I was aware of all measures of that kind. A gentleman said it was in the acts. I said it is some local law providing for the protection of game in some other county, and that somebody had amended it in the House by adding Jefferson. He said no it was an original bill introduced for Jefferson. Looking into the facts I found that such was the case, that there was a bill to protect the game in Jefferson County, one provision of which was to prevent a boy from catching partridges on his father's own land in a trap. Seeing that I was in a trap myself I concluded to see how I had voted on the subject, and by reference to the Senate Journal, I found that I voted for the bill that passed just before this particular measure, and the one just afterwards. Some kind Senator, while I was in the smoking room for a few moments, probably called up House bill so and so, and I had no idea that it had become a law, over the Senator from Jefferson when he was not present. I am in favor of this provision in the Constitution, because I believe that it would then be impossible for such a terrible accident as that to befall a Senator from Jefferson County.

MR. deGRAFFENREID—I move to lay the amendment on the table.

Upon a vote being taken the motion to table was carried.

MR. PETTUS—I rise to a point of inquiry. Where is the latter part of Subdivision 26, and when will it come up?

THE PRESIDENT—It is in suspension.

MR. O'NEAL—I move now that we take up the latter part of Section 1, which has not been disposed of.

THE PRESIDENT—Amend Section 1 by adding that part after the words “no special,” etc.?

MR. O'NEAL—Yes, sir.

MR. PETTUS—I desire to offer an amendment.

MR. O'NEAL—As I understood the motion this morning, it was to suspend the consideration of that matter temporarily. It was withdrawn by unanimous consent and I now ask unanimous consent to offer it for the consideration of the Convention.

There being no objection, it was read as follows:

Twenty-sixth — Creating, increasing or decreasing fees, per centage or allowances of public officers. No special, private or local law, except a law fixing the time of holding courts, shall be enacted in any case, which is provided for by a general law, or when the relief sought can be given by any court of this State, and the courts and not the General Assembly shall judge as to whether the matter of said law is provided for by a general law and as to whether the relief sought can be given by any court; nor shall the General Assembly indirectly enact any such special, private or local law by the partial repeal of a general law. The General Assembly shall pass general laws for the cases enumerated in this Section.

MR. PETTUS—I offer an amendment.

The amendment was read as follows: “Amend Article on local legislation by striking out from the proposed ordinance the words “and the courts and not the General Assembly shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court,” in line 33, 34, 35, 36 and 37 of subdivision 26.”

MR. OATES—I desire to offer an amendment to his amendment. To strike it out, but my amendment shows what I propose to insert, if this is stricken out.

The amendment was read as follows: By striking out all that portion of said subdivision after the word “State” in line 35, down to and including the word “court” in line 37, and inserting in lieu thereof the following: “There shall be appointed in each House of the legislature a standing Committee on Local and Private Legislation, the House Committee to consist of nine Representa-

tives and the Senate Committee of five Senators. No local or private bill shall be passed by either House, until it shall have been referred to such Committee thereof, and shall have been reported back with the recommendation in writing that it be passed, stating the reasons therefor and why the ends to be accomplished cannot be reached by a general law, or by a proceeding in court, or if the recommendation of the Committee be that the bill do not pass, then it shall not pass the House to which it is so reported, unless it be voted for by a majority of all the members elected thereto.

MR. PETTUS—I am inclined to think that I shall oppose the amendment proposed by the gentleman from Montgomery, and favor the amendment as I offered it originally, but I do not know that I care to discuss his amendment at this time and I yield the floor to him, as the question will be on the adoption of his amendment.

MR. O'NEAL—I think the adoption of the amendment offered by the gentleman from Limestone, would destroy the chief purpose of this article in preventing local legislation. I desire to call the attention of the Convention to the fact that in the Constitution of 1875, the following provision is to be found.

23. No special or local law shall be enacted for the benefit of individuals or corporations in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the General Assembly for the benefit of any individual, corporation or association.

Now, the effect of the amendment of the gentleman from Limestone is simply to reincorporate that section of the old Constitution into the article reported by the Committee on Local Legislation.

Now, what is the objection to that old section in the old Constitution? It is simply because the courts of Alabama decide that whether a case can be provided for by a general law or not is a question of legislative discretion. Now if you leave it as the amendment of the gentleman from Limestone would make it, you say to the General Assembly that it is a matter entirely within their discretion as to whether they can provide for a local condition by a general law, and of course they would always, as they have done in the past, pass local laws, and there would be no remedy. It was to overcome that decision of the court that we introduced the provision that the courts and not the General Assembly should determine whether the local condition could be provided for by a general law.

MR. JONES (Montgomery)—Would it not be considered that the Constitution had adopted that section in the light of the rul-

ing of the Supreme Court, that that was a matter entirely for the legislature?

MR. O'NEAL.—Why, of course, as my distinguished friend from Montgomery suggests, if you adopt this provision, it would be a recognition that this Convention adopted the decision of the Supreme Court in respect to that section, which says to the legislature of Alabama that although the Constitution provides that you shall not pass local laws on a subject it is a matter within your discretion, and if we leave it to their discretion it breaks down every barrier which we have enacted against the evils of local legislation. Therefore, I move to lay both of the amendments on the table.

MR. PETTUS.—I ask the gentleman from Lauderdale to yield the floor to me.

MR. O'NEAL.—Certainly, if anyone desires to discuss it.

MR. O'NEAL.—I desire to say a word before I yield, however. The amendment offered by the gentleman from Montgomery might not be objectionable if it was put in a separate place, or as a separate section, but if it is incorporated as part of this section, it will destroy the meaning. If the gentleman will offer that as a separate section, I have no doubt that no objection will be made, for it provides safeguards against local legislation, to provide that the legislature shall have special committees, clothed with quasi judicial power to decide these matters as to what are proper subjects for local legislation.

MR. HARRISON.—Is not the present Article which has just been adopted different from our present Constitution? and isn't it a positive inhibition upon the passage of local laws prescribed in thirty odd sections which are not contained in the other?

MR. O'NEAL.—Certainly.

MR. HARRISON.—Then there is no great necessity for such a provision as this?

MR. O'NEAL.—Yes, there is, I will say in response to the gentleman there might be a local matter which we have not provided for, and while we say to the legislature that you must provide for all local matters by general laws if it is possible, we do not propose to say it is a matter left to your discretion, but it is a matter for the courts to determine whether or not you could have carried out that injunction of the Constitution. That same provision as to general laws is found in the Constitution of Mississippi.

MR. HARRISON.—I see here thirty odd provisions in which they are positively prohibited from legislating by local laws. Will they be dependent upon the provision you are now discussing?

MR. O'NEAL—Not at all, but this is simply to provide for local laws. The legislature might otherwise say that they did not provide for it by a general law, because it was a matter within their discretion as to whether it could be provided for by a general law and in the exercise of that discretion we decided that we could not do it and there is no appeal from that legislative discretion, according to the decisions of our court. In reference to that a decision has been handed me in reference to sustaining a special law in the case of *ex parte State of Alabama in re Knox*, the Supreme Court in considering this same provision of the old Constitution said:

“It is the suspension, the temporary stopping of existing laws for the benefit of individuals or corporations the Constitution forbids, not the power of the General Assembly when enacting general laws, to determine whether there may or may not be persons or subjects, which ought to be excepted from their operation.”

Now, you find that we provide that the general laws shall not be suspended for the benefit of an individual and the latter part of this provision is “nor shall the General Assembly indirectly enact any special, private or local law, by the partial repeal of a general law.” The purpose of that was to prevent a general law from being introduced into the Legislature and then county after county being excepted from its operation, thereby creating a local law.

I yield to the gentleman from Limestone with the understanding when the gentleman from Montgomery himself conclude their argument he will renew my motion to lay on the table, or yield to me for that purpose.

MR. PETTUS—I will have no objection to his renewing the motion.

It seems to me that the committee in its zeal to stop local legislation has taken a step which will prove rather dangerous. We have in the declaration and Bill of Rights which we adopted the other day a section which declares that the judicial shall never exercise the legislative and executive powers, or either of them, to the end that it may be a government of laws and not of men. It seems to me that if we adopt this section as reported by the committee and authorize the courts to pass on the questions of whether or not a law could have been provided for by a general law, or whether or not the courts would have afforded the relief in that particular instance, that we clothe the courts with legislative powers and authorize them to repeal an act which has been passed with all of the forms of law by the General Assembly, a long time after that act has become a law.

MR. O'NEAL—Do not the courts exercise a quasi legislative power in declaring laws to be unconstitutional? Do they not in effect repeal them when they declare such laws to be unconstitutional?

MR. PETTUS—I do not understand that they do, and even if that be true no Constitution before has set traps for the General Assembly to fall into for the purpose of giving courts the pleasure of repealing acts. Now it seems to me if an act was passed by the General Assembly in good faith, then though the court in its greater wisdom might have found a method to provide for the relief sought, or decided that it could be done by a general law, under the act as passed, transactions may take place and rights and interests accrue and it might go on for years and years and at the end of seven or ten years if the question was brought before the courts and the court upon a state of facts different from those that confronted the General Assembly at the time they passed the act, either because it spent more time in the investigation of the facts of the case, or else because some of the facts were not before the court that were before the General Assembly, the court should declare that the case could have been reached by general law, and therefore the act is void and unconstitutional. It would be void ab initio and it seems to me that the rights that probably have accrued under the act would be invalidated and it would develop dangers to the material welfare and interest of the State.

MR. BANKS—This section here does not say that the courts are to decide whether a general law may provide for the matter in question, but whether a general law has already provided for it.

MR. PETTUS — I understand it provides as to whether a general law has already been provided, and as to whether relief could be given by any court, but I submit that does not remedy the objection to the section is reported by the committee. Now, the committee has specified some 36 kinds of local legislation by name, the subjects which most frequently arise to encumber our statute books, and has absolutely cut them off and prohibited them, and I submit that is far enough to go, and we ought to clothe the courts with the power to pass upon the acts of the Legislature in this manner.

MR. COLEMAN—If the Legislature can determine whether or not any act is a local act or a general law, what is to prevent it from legislating directly upon the exceptions here, and to say that all would be valid?

MR. PETTUS—I take it that the oath of any member of the General Assembly would be sufficient to keep him from a direct and flagrant violation of the Constitution, when it is specifically and directly prohibited by name. I think that the decision of the

court that the Legislature is the judge in the first instance of whether or not this can be done is eminently correct. If the law is passed under this section as reported by the committee, it will stand as a law until it is carried before a court, and it is decided that some court could have given the relief, or that there was some general law upon the subject, and I submit it is a dangerous section, and should be stricken out.

MR. OATES—Two questions are presented by the proposition reported by the Committee on Local Legislation and the amendments. The proposition reported provides for the courts to judge and pass upon questions, by the use of the following language: "and that the courts and not the General Assembly shall be the judges of whether the subject of any local law is provided for by any general law and whether the relief sought can be granted by any court," will, in the opinion of the committee, very materially aid in preventing local legislation.

Now there is no provision that the courts or that the Judge of any court should pass upon that and give his opinion before the Legislature acts. Then necessarily as it stands, when the Legislature acts and passes a law and it comes under the review of the court—before the court, the court would have to pass upon that question or those questions. Now a certain law may have stood for ten years and rights may have been acquired under it; and transactions had involving questions of great importance, and at last it is brought before the court, which holds that the law should not have been passed because it could or was provided for by a general law. That is the great objection to it. Now sir, the amendment which I sent up there is substantially, with a few verbal changes only, the provisions in the Mississippi Constitution. In their new Constitution they preceded this provision by several inhibitions upon the Legislature passing local laws; and it seems to me it is a wise provision. It is substantially this: That there shall be a committee in each house, nine in the House of Representatives and five in the Senate, to which any bill which is introduced to be enacted into a local law shall be referred, and that committee shall pass upon it. They examine the statutes in existence and see whether any general law has been enacted, under which the relief sought by that bill can be obtained. If so, then it is the duty of the committee to report adversely in writing, stating the reasons why they won't recommend it. In other words, the committee is to examine into it and report whether it be practical or proper to pass such a law. If the committee in either house reports adversely, then it requires a majority of all of the members elected to that house to pass the measure over the report. If they report adversely, it requires an affirmative vote of the majority of all the members elected to the house to pass the bill. If they report favorably, it would be accepted, no doubt, and the bill would be passed.

MR. WALKER—Is it not the duty of the Legislature not to pass any local or special law, unless they find that subject can not be disposed of by a general law?

MR. OATES—Such a provision is now in the Constitution.

MR. WALKER—Isn't it a fact that that provision in the Constitution has been completely and notoriously ignored by the Legislature?

MR. OATES—It has. It is a method which has very largely prevailed. But if the committee is directed by the Constitution, as that amendment attempts to do, to direct them, they certainly would not evade that duty or disregard it, as has been insinuated is the probable fact in regard to the present Constitution. Now certainly I have no objection to the change in the phraseology of the provision which I think will be read a little further on in the report of the Committee on Local Legislation, in substance that if notice be given by publication in the newspaper of the intent to prosecute the passage of a local measure, and it is passed, if the record affirmatively shows that such notice was given. I would like to have the attention of the chairman of the Committee on Local Legislation on that proposition. You have said substantially, but not in the exact language, that wherever a bill is passed, notice of the intention of the parties must be given and that the record shall affirmatively show it has been done. Then, of course, it will become a question for the courts if that be overridden, because if it was disregarded, the law would be unconstitutional. I would favor a provision of that kind to have a committee in each house to pass upon these local bills, and make their reports in writing, which would be a safe-guard upon it. It does nobody an injustice, and I think it is an entirely proper proposition to make; and whether it be entirely proper in this place by striking out the language which they have reported, or not, if in the opinion it is not, then I think it ought to be put in as an independent clause. I certainly think that a provision for a committee in each house, as provided by the amendment which I have presented, ought to find its place in the Constitution in connection with this local legislation.

MR. O'NEAL—What is the necessity of putting a provision in the Constitution to create a Committee on Local Legislation? Would not the Legislature have the power to do that without any Constitutional enactment on the subject?

MR. OATES—They certainly would in the loose way in which such things are usually done, but if they could not ignore the duties pointed out by that instrument, especially under their oath at office.

Mr. Fitts of Tuscaloosa here took the chair.



MR. JONES (Montgomery)—This is one of the most important questions that has arisen in the debate on this section, for upon the action of this Convention on this matter may depend whether any of these requirements will be of any practical force. The gentleman from Greene made a very pertinent suggestion, and I want briefly to call the attention of the Convention to it. Now it is known to all lawyers in this body, and I think to a good many other delegates, that when a convention acts upon, or changes a section of the existing Constitution, which has been considered by the Supreme Court, that they do it with reference to the decision of that court. Now we have had a decision of the Supreme Court on a section almost identical with this, and which would be identical if the amendment offered by the gentleman from Limestone is adopted. That is the question before the house, then. If you leave it in there you know that it is nothing more than waste paper, because the Supreme Court has decided that no matter what you say in the Constitution, it is within the province of the Legislature if they so choose, to disregard it.

MR. OATES—Will you—

MR. JONES (Montgomery)—I am not after your amendment.

MR. OATES—I know, but I want to ask my colleague if he is not stating that proposition too broadly?

MR. JONES—I think not.

MR. OATES—Did not the Supreme Court decide in the case before it in regard to that local law, that they would presume that all was done that was necessary to be done?

MR. JONES—No, sir; they decided that the Legislature was the exclusive judge, and that the courts could not revise its action. At least that is my recollection of the decision. I have no doubt about it, and I think if my friend will read the decision, he will find that the Supreme Court said that when the Legislature acted, the matter was conclusive upon the court.

MR. FERGUSON—The decision of the Supreme Court was to this effect, where the journal did not show to the contrary everything in favor of the regularity of a local law would be presumed.

MR. JONES—Of course, but I am talking about a different thing. The presumption of the advertisement, if the journal did not show to the contrary, etc., but this is where the Legislature passes a special law, and the question comes up whether it could have been provided for by a general law, and the Supreme Court said that the fact that the Legislature decided a special law was necessary was binding on the court, and the court could not revise it. I do not think there is any question about that. The only way the gentleman could convince me on that is to send and get this

decision, and one or two others, and show me that it did not announce that proposition. That has been the accepted action of the Supreme Court of Alabama for the past twenty-five years.

MR. MACDONALD—I wish to ask the gentleman whether it is his view that although we have adopted these various subdivisions prohibiting the Legislature from dealing with matters concerned in them, that if the amendment suggested by the gentleman from Limestone is adopted, that it will still leave all these matters subject to legislative discretion?

MR. JONES—My personal opinion is that it would not, but I said it would be in peril if we should turn the Supreme Court loose with this doctrine sticking to the old Constitution, that the Legislature was the exclusive judge, and why they could not provide for the condition by a general law, and therefore they would provide a local law, and we are in danger of getting in the same condition as the framers of the Constitution of 1875, when they issued that elaborate address to the people and told them that they felicitated them on the fact that the evils of local legislation were put an end thereto thereafter. Now something is said here about the courts exercising legislative power, but it is directly competent for the framers of a Constitution to put a check or balance by one department on another. It may be the court, or they may leave it, as the gentleman states, to the oath of the Legislature, or they may provide to let the Legislature judge in the first instance, but as a matter of last resort leave it to the court which passes as the tribunal of last resort on your life, liberty and property. There is nothing improper in that, and it seems to me that we had better strike out the whole Section altogether and have none, than to put in here that the Legislature shall not do certain things when we know that the Constitution has been construed to mean that that is waste paper if the Legislature chooses to do it, and for that reason I am heartily in favor of that portion of the Committee's report, and against the adoption of the amendment offered by the gentleman from Limestone.

MR. WILSON (Clarke)—I apologize to the delegates for rising to discuss this question, but a sense of the great importance of the question has compelled me to do it. It is recognized, as the gentleman has said, that the courts have repeatedly held, that the old clause in the present Constitution says that the Legislature may not pass any local law which can be provided for by a general law, still the courts leave it exclusively to the Legislative Department to determine whether it might have been provided for by a general law, and therefore permit the Legislature to pass the local law. To prohibit that state of affairs the Committee on Local Legislation has brought in a proposition here to let the courts and not the Legislature be the exclusive judge of whether the subject matter of local law could be reached by some general law in opera-

tion. The amendment proposed by the gentleman from Montgomery, it seems to me, will go a long ways towards checking the objections to the present clause, and does not contain the dangers which are in the arrangement proposed by the Committee on Local Legislation. The only objection which gentlemen of the Committee on Local Legislation have urged to the amendment and in favor of the proposition reported by them is that if you strike out this part of this Section you destroy their Section. Now I say, Mr. President, I would rather destroy their Section than to destroy somebody's property, who has invested in good faith under a local law passed by the General Assembly, and which the court sometime after has declared could have been done under a general law, and therefore that it is all wrong.

MR. BANKS—I want to call to your attention and also to the attention of the gentleman from Limestone, the fact that this Section does not say that the courts are not to decide whether or not a general law could have been enacted, but whether or not a general law has been enacted.

MR. WILSON (Clarke)—I understand that the Section says that if the courts find that the relief could have been had under some general law in effect, that the courts can declare the law unconstitutional. I do not think that makes the matter any better, because we have general laws of some kind on almost every subject, and I think if we put this Section in the Constitution as reported here by the Committee on Local Legislation, why then you leave the door open for some innocent purchaser, or some person who has acted in good faith upon the action of the Legislature, to be deprived of his property. I believe that is a dangerous proposition. Now as to the method proposed by the gentleman from Montgomery to meet the evil which exists in the present Constitution, I believe there is merit. My friend on my left, the gentleman from Mobile, Mr. Pillans, has suggested to me that is the provision of the Constitution of Mississippi. He is a practicing attorney in the State of Mississippi and has called my attention to the fact that both the local and general laws of Mississippi are not larger than the general laws of the State of Alabama. Here are the acts of Mississippi from 1894 to 1900. This proposition which is proposed by the gentleman from Montgomery is very similar to the Mississippi plan. I believe if we have a Constitutional Committee, whose duty it is to examine a bill and ascertain if there is a general law covering the subject, which committee is required to give their reasons, I believe that would be a great check in this direction. Besides that, we have the thirty-seven other checks which we have put in this Article. There are thirty-seven subjects here that a local law cannot be passed on, about which a local law could have been passed under the old Constitution. That is another check. I think they have a proposition in here that the Journal must af-

firmatively show the notice if that is adopted, that is another check. It might be added to that this Committee on Legislation shall ascertain and report whether the notice was given. That would be another check, but I submit, Mr. President, it is not wise to leave the thing so that the Legislature after it has passed a law and people have acted on it and put their money in it for a court to come along and say that the thing is all wrong after a man has put his money in it.

MR. WALKER—It does not seem to me that the amendment proposed by the gentleman from Montgomery would, any more plainly, put upon the Committee that it is their duty to pass upon the question of whether or not the subject could be provided by a general law than the present Constitution puts upon the General Assembly the duty of ascertaining that fact. I cannot anticipate that the action of such a committee would be any more satisfactory than has been the action of the Legislature in reference to that matter. And the action of the Legislature in reference to their duty has been simply a complete and total ignoring of the duty imposed upon them by the Constitution. They ascertained years ago that it was left in the power of the Legislature to say whether or not a matter shall be disposed of by a general law, and having ascertained the existence of the power, they have never questioned projects for local legislation beyond that. The inhibition on local legislation has been flagrantly and completely ignored. It would be as completely in the power of the Committee that is proposed to be formed, to ignore this duty, as it is in the power of the Legislature, and the sufficiency of the reasons given by the Committee are not matters to be questioned by the General Assembly. All that this Committee would have to do in any case where a project of local legislation was presented to them, would be to sign a report presented by a member who wanted the local legislation passed and the sufficiency of those reasons would not have to be gone into. All in the world that the legislature would require is that the Committee would file its pro forma report required by the Constitution. If that is done, they have got the power and they do not have to ask any other questions. The precedent of the legislature of Alabama warrants me in forecasting the future in reference to a provision of this kind, that it would practically amount to nothing. That the provision against local legislation, would leave it where it was before. In other words, the legislature would have the power to determine whether a matter could be provided for by general law, and if they determine that they did not think that it could, they would have the power to pass a local or special law on the subject.

MR. SMITH (Mobile)—Suppose the legislature were to pass a local law which was provided for by a general law, and the Supreme Court should subsequently so decide, what effect would it

have? Would it not have the effect to uphold the right under the law because it was covered by the general law?

MR. WALKER—If it is already covered by a general law, yes.

MR. SMITH (Mobile)—What effect on it does the decision of the Supreme Court have? It just simply says that it was covered by a general law?

MR. WALKER—If the Supreme Court passes upon the question whether or not the local law or special law is a valid place of legislation, if rights are claimed to have accrued under that local or special legislation, why if the local or special legislation should be held to be invalid, the right could not be sustained.

MR. SMITH (Mobile)—If the court held that it was covered by a special law the right would be protected, would it not?

MR. WALKER—Yes, sir.

MR. SMITH—If, on the contrary, it held that it was covered by a general law, it would not be covered by the special law, so the adjudication of the court will be a nullity in either case, so far as the rights are concerned.

MR. WALKER—I really don't understand the purport of the question?

MR. SMITH—If the Court decided that he had a right under a general law, and that it was covered by the general law, he would have the right under the general law.

MR. WALKER—Yes, if the local law did not amount to anything.

MR. SMITH—And if they decided the other way, and held that he had the right under the special law, but that the special law was covered by the general law, he would still have the right, would he not?

MR. WALKER—The decision of the court would show that this piece of legislation was wholly useless.

MR. O'NEAL—This section provides that no special or private law shall be enacted in a case which is provided for by a general law. Now I was going to make the inquiry along the line suggested by the gentleman from Mobile. If you obtained your rights under a local law, and the Supreme Court should hold that that local law was unconstitutional, because the matter of that local law was already provided for by a general law, then a party could not be injured, because the rights were acquired under the local law, and he would still hold his rights under the general law which is in existence.

MR. WALKER—That is true.

MR. O'NEAL—Is not that a complete answer to the proposition that this would affect property rights? How could it affect property rights when, if the property rights were acquired under a local law, that local law was void on the ground that a general law existed at that time which covered the case, and the general law which existed would protect his property rights, would it not?

MR. WALKER—Of course if the subject was covered entirely by the general law, the special legislation would amount to nothing.

MR. WILSON (Clarke)—Well, then, suppose the Court would hold that the relief sought could have been obtained from a court, but the fellow went along and acted under a general law, what would be the result?

MR. WALKER—He would not have the relief, because he did not apply to the Court. He ought to have followed the law and not proceeded on his rights under the void act of the legislature.

MR. WILSON (Clarke)—But his money is gone under that act.

MR. WALKER—Certainly, and a man's money is always gone when he acts under a void act of the legislature.

MR. COLEMAN (Greene)—Not necessarily, but may be.

MR. LONG (Walker)—That is the result of invalidating any act of the legislature.

MR. LONG (Walker)—Mr. President, I have set here for forty-one days and can truthfully say that in that entire time I have heard a great many attacks upon the legislature. The legislature has done many unwise things in the past. The last legislature did many unwise things, but I am constrained to believe that about the worst thing it did was the calling of this Constitutional Convention.

Now, Mr. President, after stating in Section 1 of this article thirty odd things that the legislature cannot do, it goes on to say here that they shall not be the judges of their own acts, and shall invite the criticism of the courts of the country as to what they do. Then in the next section it says that no special, private or local law shall be passed on any subject not enumerated in Section 1 of this Article, except in reference to courts, etc. They are not satisfied with naming everything that they can think of, but they go further and say that they shall not do anything else, and then they want to put a special article in here that the courts shall construe this thing and the legislature shall have nothing to do with it. Now, gentlemen, the difference between a legislature and this body is that the legislature represents the people, and this

body of 155 men claim that they are the people. But that is a mistake. They are not the people, the legislature is nearer the people than this assembly is, though we are as big as we think we are. As far as I am concerned, it makes no difference, but I want to call the attention of this house to the danger that we are getting into. Why not abolish the legislature in its entirety. Why not put a provision in there that they shall never call another Constitutional Convention. Why should we not say that they shall not do anything in the future and abolish them forever from the face of the earth. That is exactly what you are driving at in these articles. Two distinguished Chairmen of different Committees have consolidated to name the things that the legislature shall not do. The legislature has existed ever since the Declaration of Independence was firmly established upon this continent. It is nearer the liberties of the people than any body you can get. There is hardly a man from the rural districts that runs for the legislature but what discusses the issues all over the county. I care not what you say. I tell you that we are going too far in this effort to prohibit local legislation. We are trying to fix a jacket here that will do for the whole State of Alabama, when our interests are entirely different in some parts of the State as the moon is from the stars. Why Mississippi is no more a comparison for this State than a cur dog is with an elephant. Mississippi's interests are all farming interests, so to speak. Alabama's interests consists of her iron, coal and her agricultural interests. These all need different laws for their different sections. We cannot frame a general law that will suit the whole State of Alabama. It looks as if you desire to fix it so that if James Smith desires to change his name to James Hancock you have got to provide by general law that every man in the State of Alabama, after that, shall be named James Hancock.

Gentlemen, that is exactly what you are driving at. It is time this Convention was thinking of what it is doing. They should leave some liberty to the people. You have provided now for thirty odd shackles on the legislature and you are cursing and demeaning the power that created you. I want to call your attention to that, and one of the commandments says that you shall not take the name of thy Creator in vain, and if it had not been for the legislature you would not have sat here in this distinguished body of gentlemen, statesmen that you are. I have been tempted time and again to rise to my feet as a matter of personal privilege to defend the legislature of the State of Alabama. The legislature is not such a body of fools as you would have one to believe that they were, and they are not a dishonorable, disreputable class of ruffians that meet down here overriding the wishes of the people. They are nearer the people than anybody on earth. You want to turn over as far as possible to a lot of "simlim" headed commissioners of a county, that cannot spell Constantinople to pass laws for a whole State, and for the different counties in the State. You

say that my county has got to have a certain kind of a jacket, because Mobile wants a certain kind of a jacket. Gentlemen, you are going too far. I just want to call the attention of the Convention to this fact. As far as I am concerned I shall vote for the amendment offered by the gentleman from Limestone knocking that out, whether it can be considered before or after the act is passed. I suppose not being a lawyer it beats me both ways and they have got a right to consider it before and after both.

MR. WHITE—Since hearing the gentleman from Clarke or the gentleman from Mobile, I believe it was, showing that the local laws had become cumbersome in the State of Mississippi, I want to say that in that State they never have been given to local legislation. I served in one Legislature there. I had the honor to serve in their Legislature in 1876 and we did not pass a single local act and we would not pass one for anybody. Up to that time the Republicans had passed a great many, nearly as many as have been passed in the State of Alabama. The people of Mississippi became disgusted and would not pass local legislation, but there is something more to that than a Constitution, because there is a general law in Mississippi by which a great many of these things can be accomplished, and that general law would have to be repealed before you could get the local legislation. That is why the local legislation in Mississippi appears to be as small as it is. I think if we leave this provision in here we might just as well strike out what we have done today. If we allow a committee of the Legislature to determine whether or not a general law has, or a general law will, provide for this local legislation, we have not moved forward a single step. We are exactly where the Constitution of 1875 left us, and if local legislation has become an evil then we might expect to bear that evil still. There is only one way to avoid it in my judgment and that is to adopt the report of the committee which shows this is a question for the court and not a question for the Legislature.

MR. PILLANS—In as much as the gentleman from Jefferson, and a little earlier from Mississippi, followed the lead of the gentleman from Walker, I was rather surprised at his ex-state, and I would like to make an explanation. It has been said that Mississippi did not pass local laws because it was an agricultural State and did not need them, as I understand, but I desire to put in evidence the difference between the local legislation of Mississippi in 1890, the year they adopted a Constitution with stringent clauses prohibiting local legislation, and 1898 after the adoption of that Constitution. There is a volume as big as an old-fashioned volume of the acts of Alabama, along in the late 80's. There is their volume of acts, 900 pages. Almost all of that volume is made up of local and special acts. These are acts which are not general laws applying all over the State of Mississippi in their operation. In 1898,



acting under a system and controlled by a system which is proposed by the amendment of the learned gentleman from Montgomery, that is the book of acts which was passed, a little smaller than our blue back spelling book containing the general acts of 1900. I do not care to make any further argument.

MR. WHITE—Was not that a called session of the Legislature of Mississippi?

MR. PILLANS—I think not. This is about the size of their book, and this is a general session. Now that shows that they are able to reduce their legislation from that weighty tome to this one as the result of the precise plan which is proposed by my distinguished friend, which can be improved upon as alluded to by the gentleman from Clarke, by requiring that the committee, if it shall be adopted as a part of the system of Alabama, must make a written report upon legislation. It will be improved upon if it requires that the committee in its report must find definitely whether or not the publication which may be required in certain cases has been made and that the other matters pre-requisite have been performed.

MR. PETTUS—I move the previous question on the section and the pending amendments.

The main question was ordered. Upon a vote being taken upon the amendment offered by the gentleman from Montgomery, a division was called for and by a vote of 18 ayes and 60 noes the amendment was lost.

MR. WATTS—I move to lay the amendment of the gentleman from Limestone on the table.

THE PRESIDENT—The previous question has been ordered upon that amendment as well. The Clerk will read the amendment offered by the delegate from Limestone.

MR. LONG (Walker)—I ask for a reading of the section as it would read with the amendment. The section was read.

MR. O'NEAL—I rise to a question of privilege. I believe that the chairman of the committee has a right to conclude the debate on this question, and I yield to the gentleman from Montgomery, Mr. Watts.

MR. WATTS—There seems to be some misapprehension as to what this law provides. It provides that no special, private or local law except a law fixing the time of holding court shall be enacted in any case, which is provided for by a general law, or when the relief sought can be given by any court of this State. Now mark you, the language is not which can be provided by a general law, but it is "which is provided by a general law." The Supreme Court of Alabama in construing this language as it ap-

peared in the Constitution of 1875 said that the Legislature was the judge of whether or not a matter before them was covered by a general law or whether or not the relief sought could be granted by any court. If we leave in the Constitution the language just as it was in the Constitution of 1875, we simply say to the people of Alabama that this Constitutional Convention adopts the opinion of the Supreme Court, and that hereafter, as heretofore, the Legislature shall be the exclusive judges of whether or not a matter introduced before them is provided for by a general law, or whether the relief sought can be granted by a court.

MR. LONG (Walker)—Is it not a fact that we have already adopted about thirty odd clauses and named about thirty odd cases in which the Legislature cannot pass any local law, special or private law?

MR. WATTS—That is right.

MR. LONG (Walker)—Is it not a fact that there is a wide and great difference between the present Constitution and the one which we propose to adopt?

MR. WATTS—It is true that we have adopted thirty odd absolute prohibitions upon the Legislature.

MR. LONG (Walker)—Is it not a reflection upon the Supreme Court for us to say that this Convention adopts a thing in the opinion of the Supreme Court?

MR. WATTS—No, it simply shows the wisdom of this Convention when the Supreme Court, the highest tribunal in the State, points out a defect in the fundamental law and the people in Convention assembled have an opportunity to remedy it, it is their duty to remedy it, and if they do not do it they would be considered by the Supreme Court to have agreed to the old Constitution and the law as laid down by the Supreme Court.

MR. LONG (Walker)—I don't think the gentleman understands the question.

MR. PITTS—If you adopt this Section as you propose to, what is the use of adopting the thirty-six exceptions already provided for?

MR. WATTS—The reason of adopting the thirty odd prohibitions already adopted was to point out specifically to the Legislature the things that they could not do but this provision is to prohibit them from passing any law of the same nature in regard to other subjects which are not mentioned and which are provided for by the general law.

MR. GRANT—You go on and state that the courts and not the General Assembly shall judge as to whether the matter and so

on. Now a man who wants to have a local measure introduced, a bill of doubtful character, don't know exactly whether it is local or general. Now how will he get the determination of the court?

MR. WATTS—He don't get the determination of the court, but it is the presumption that in every Legislature there are some lawyers and if they are lawyers they will know whether or not there is a statute in the book which covers a proposed measure, and if they are lawyers they will know whether the relief sought by the particular measure can be granted by any court, and not by the Legislature, and that is the reason it is put there, because the Supreme Court formerly held that the right was left to the Legislature to determine for themselves, and we propose for the court to exercise the constitutional function of determining what is the law.

MR. GRANT—How do you get the determination of the court before the legislation is introduced?

MR. WATTS—You cannot get it before.

MR. MALONE—Have not we already refused to adopt Section 26—

MR. WATTS—No sir; it simply says that the Legislature shall not adopt any local legislation upon a matter which is provided for by a general law.

MR. WADDELL—I make the point of order that the gentleman's time has expired.

THE PRESIDENT PRO TEM—The gentleman has four minutes of his ten.

MR. WATTS—Now the Supreme Court said that you could not put into this Constitution a provision as to those things which could not be provided for by general law, because that would go out into the world as speculation and nobody could ever determine what could be provided for by general law, and there might be a great deal of ingenuity in evading that. But you can put in there what is provided for by general law, because everybody knows that. The laws are published and you can read them and find whether or not a general law does provide for the matter, and every lawyer at least can determine whether or not the relief sought by the particular bill could be granted by any court.

The President resumed the chair.

MR. PROCTOR—I desire to ask a question. To adopt the amendment offered by the gentleman from Limestone, would virtually make the whole section inoperative.

MR. WATTS—It would make it like it was before when the Supreme Court said that the Legislature was the judge and not the court.

MR. PETTUS—Did the old Constitution have these thirty-six or seven specific kinds of laws enumerated that the Legislature could not pass?

MR. WATTS—No, it did not, unfortunately.

MR. PETTUS—Then I take it that it is different, and not as you answered the gentleman from Jackson.

MR. WATTS—There is a difference, but this makes it a little more difficult for the Legislature to pass local legislation.

The question being on the adoption of the amendment of the gentleman from Limestone, upon a vote being taken the amendment was lost; the question recurring on the motion to adopt the section, a division being called for, by a vote of 64 ayes and 33 noes, the section was adopted.

MR. MALONE—I wish to state that the object I had in voting aye was to move to reconsider tomorrow morning.

THE PRESIDENT—Did the gentleman say he intended to move to reconsider?

MR. MALONE—I move to reconsider tomorrow morning.

THE PRESIDENT—The vote whereby the section was adopted?

MR. MALONE—Yes, sir; this sub-division.

MR. O'NEAL—You cannot move to reconsider it tomorrow. You can move to reconsider it now and it will be heard under the rules tomorrow morning.

THE PRESIDENT—The gentleman can move to reconsider, and under the rules a motion to reconsider would go over until tomorrow morning.

MR. MALONE—That is what I wanted.

MR. SANDERS—I move that the rules be suspended and that the reconsideration be taken up now.

Upon a vote being taken, by a vote of 45 ayes to 45 noes, the Convention refused to suspend the rules.

Section 2 of the Article reported by the committee was there-upon read as follows:

Sec. 2. No special, private or local law shall be passed on any subject not enumerated in Section 1 of this Article, except in

reference to fixing the time of holding courts, unless notice of the intention to apply therefor shall have been published, without cost to the State, in the county or counties where the matter or thing to be affected may be situated, which notice shall state the substance of the proposed law, and be published at least once a week, for four consecutive weeks, in some newspaper, or if there is no newspaper published in the county, by posting the said notice for four consecutive weeks at five different public places in the county or counties, prior to the introduction to the bill; and the evidence that said notice has been given shall be exhibited to each house of the General Assembly, and the fact of said notice spread upon the journal. The courts shall pronounce void every local law which the journals do not affirmatively show was passed in accordance with the provision of this section.

MR. SAMFORD—I move the adoption of Section 2 and on that I move the previous question.

MR. CUNNINGHAM—Before the motion is put, I would like to ask the chairman of the committee if the substance of the proposed law means that the law itself in substance shall be published, or will the purpose of the proposed law be published. Would it not be better to strike out the substance and insert the purpose?

MR. O'NEAL—The Committee did not desire that a community should be mislead as to the purposes of the law, and sometimes the caption of a law is very misleading and it was to obviate advantage being taken of the public in the matter that it was written as it is.

Upon a vote being taken the main question was ordered and upon a further vote the section was adopted.

Section 3 was read as follows:

Sec. 3. The General Assembly may repeal any special, private or local law upon notice being given and shown as provided in the last preceding section.

MR. SANDERS—I have an amendment which is acceptable to the Committee, and I move the previous question upon the subdivision and the amendment.

The amendment was read as follows: Amend Section 3 by adding after the word "repeal" in the first line thereof, the following words: "or modify any special, private or local law.

MR. ASHCRAFT—I would like to ask the Chairman of the Committee if it does not mean by the word "may," that the legislature shall not repeal it except upon such notice?

MR. O'NEAL—Yes, sir. It requires the same notice to repeal a special law that it does to enact one.

MR. ASHCRAFT—Then it seems to me that it ought to read that the General Assembly shall not repeal a special law except upon notice.

MR. O'NEAL—It seems the same thing, and the Committee on Harmonics can arrange the grammar.

Upon a vote being taken, the main question was ordered, and upon a further vote being taken the amendment and the section were adopted.

Section 4 was read as follows:

Sec. 4. The operation of no general law shall be suspended for the benefit of any individual, corporation, association, town, city, county or township, nor shall any individual, corporation, association, town, city, county or township be exempted from the operation of any general law.

MR. SANDERS—I have an amendment which is acceptable to the Committee.

The amendment was read as follows: Amend Section 4 by adding thereto the following words: "Provided, that nothing in this section or article, shall affect the right of the legislature to enact local laws regulating or prohibiting the liquor traffic.

MR. O'NEAL—The Committee cannot agree to the amendment as it is written.

MR. REESE—I desire to ask the Chairman of the Committee a question. Under that provision can you suspend the general jury law of the State or will every County in the State be required to live under the jury law of the State?

MR. WADDELL—I move that this Convention remain in session until (the gentleman was interrupted by the clock striking six.)

A DELEGATE—A point of order. The hour of six has arrived and this Convention stands adjourned.

And thereupon the Convention adjourned until tomorrow morning.

## FORTY-SECOND DAY

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MONTGOMERY, ALA.,

Thursday, July 11, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. Dix, as follows:

O Lord, our King, our God, who are the author of law and who are the administrator of thine own government in the armies of Heaven and among the inhabitants of the earth, before Thee we would approach this morning, with reverence and thanksgiving for Thy mercies extended towards us, and with obligations for the bestowment of such favor and blessing as our condition requires. We pray that Thy special favor may rest upon this convention. Do Thou enable its members so to regulate their action that the laws which shall be enacted in accordance therewith, shall be in accord with divine law, and that the administration of the future government of our State may be in accord with the divine administration. Unto this end we pray for righteousness among the people. We pray for purity not only in the ballot, but in that which the ballot confers. We pray that Thou wilt direct the desires of the people of this State, that they may not be engrossed in the accumulation of riches, but in the attainment of true wealth. We pray for purity in the home. We pray that Thou wilt above all things grant that purity in the church which becometh the body who is the light of the world. And we pray that as judgment shall commence at the house of God, that it may there meet that which conscience and divine law doth approve, and may through all the ramifications of our State life be found that which is pleasing in the sight of God.

And now our Father be with this body in this day's work. May that be done which shall be right and profitable, which the people out of a pure conscience shall commend, and that Thou shall accept. Hear us and bless us according to Thy love for the children of men that withheld not Thine own Son, but gave him that whosoever believeth on him should not perish, but have everlasting life, and may this be Thy gift unto these people for Thy name's sake, Amen.

Leaves of absence were granted to Mr. Chapman, for Thursday, Friday and Saturday; Mr. Sollie for today, and Mr. Opp for Tuesday and Wednesday last.

Upon the call of the roll, 118 members responded to their names.

The report of the Committee on Journal was read stating that the journal for forty-first day of the Convention had been examined and found to be correct, and the report was adopted.

MR. MALONE—I rise to make a motion which I gave notice of on yesterday to reconsider the latter clause of subdivision 26, which we adopted yesterday afternoon.

PRESIDENT PRO TEM (Mr. Eyster)—The question is on the motion to reconsider whereby this Convention adopted the last clause of sub-division 26.

MR. O'NEAL (Lauderdale)—I move to lay the motion on the table.

(Motion was withdrawn.)

MR. MALONE—My objection to this sub-division is that we have gone ahead and left out that could be regulated by local laws. Several provisions offered by the Committee have been stricken out, showing that this Convention does not favor those things. After we have left out everything that we can think of here comes another clause to take everything out, not only that we have voted distinctly should not be left out of this, but anything else that can be thought of. I am as much opposed to bringing matters purely local, as any other man, to the Legislature, but there are always certain conditions in which a local law or a general law cannot be as effective for the particular matter; and that a certain amount of elasticity is necessary. If we have left out anything that ought to go in, I am perfectly willing to do it; but to take in a clause that practically takes in the very thing that we have voted down here, I think is going too far. There are certain questions especially that I would hate to have included. We all know that one of the main questions in the State of Alabama is the liquor traffic and the regulation of it. We know very well that when it comes to a general law, where the combined opposition can center upon that one law, and upon that one fight, it is practically impossible to accomplish anything, even in a particular county. I am sure that certain regulations that would be all right in Ashford, Ala., will not apply to Birmingham. No question on earth about that; and my experience shows that especially in a county with a dispensary that has a general law for its operation and government, brings it into politics. It does not affect me personally or locally, for we are all right; but right there in an adjoining county dealing under a general law, I am told it took six months to elect a manager by the mode prescribed by law. It brought on a fight in the local courts and I don't know how far it was carried. Another place just above me that went in under a general law, and where a fight came up, got up so much friction, until as a matter of fact at the end of the first year the whole thing was bankrupt, purely as a result of that matter; and



the very people who sold them their goods did not get their money. Recognizing that evil, this place went to the last Legislature and had a law passed removing those evils and it is now a pronounced success. I ask that nothing be put in this Constitution either prohibiting places from getting their dispensary or the mode of regulating the whiskey traffic as they see fit, yet at the same time for pity sake don't put us under anything that will approach the political scheme of South Carolina. Any man who has studied it is obliged to admit that there is only one State that would have submitted to this and that is South Carolina. Every report personally and otherwise, shows that where each community has been allowed to adapt it to its peculiar circumstances, except as enumerated under these general laws, it has proven a success.

MR. SANDERS—Will not the amendment offered by me yesterday afternoon, just before adjournment, permitting the Legislature to enact local laws regulating the liquor traffic, meet your objections?

MR. MALONE—It will; but what assurance have we that it will be adopted? The record shows that when it was offered it was objected to, and I submit there is a nigger in the wood pile right here, and I can tell you where it is.

MR. WATTS—By striking out the words "or article"?

MR. ASHCRAFT—I would like to inquire how the article as amended will read if that is stricken out?

MR. PRESIDENT—If what is stricken out?

MR. ASHCRAFT—The amendment proposed by the gentleman from Limestone.

MR. WATTS—The reason why the amendment offered by Mr. Sanders is not acceptable to the committee in its present shape is because it contains the words "or article," which would mean if they were left in there that a liquor law would be passed without any notice at all. Where you strike out these words "or article," leaves the Legislature with the right to pass a local law without giving notice.

MR. MALONE—I am willing to remedy it in any way that we can. I submit that since I have taken this position the very people that are fighting me have come to me and said if our dispensary was operated like yours we would not fight you. There is the nigger in the wood pile. Let's know what we are about. I don't see anything at all objectionable to the amendment offered by Mr. Sanders. I think it covers the ground, but it does leave room possibly for something else to be slipped in. Therefore, I am opposed to accepting that amendment.

MR. PITTS—I hope the convention will pardon me a few moments. I have not as yet consumed the valuable time of this Convention, and I would not open my mouth now if I were not firmly convinced that the Convention on yesterday evening on the eve of adjournment, committed a grave error in passing this subdivision 26. Now let's see what has been done: Two committees have been at work on local legislation, a committee on Local Legislation and a Committee on Legislative Department, and they have reported that they have examined the Constitution of every State in the United States and searched out everything that could be objected to on the question of local legislation, and the result is that they have brought in here, the two committees together, 35 prohibitions. Not satisfied with that, they have asked this Convention to pass a clause which says that although 35 prohibitions are put upon the Legislature, yet they want to say that no special law shall be passed whereby relief can be obtained under a general law or where the courts can give relief; and the court shall be the judge of the Legislature. I thought the Legislative Department was one of the co-ordinate branches of the government. I thought it was equal in power and I thought it had the right to control its own legislation, and yet this committee comes in and says that the judiciary shall be superior to the Legislature and that the judiciary shall say which laws are local and which are not. I call upon the chairman of the committee, either one of these committees, to name a single instance of local legislation that is not prohibited by this subdivision.

MR. WATTS—Local legislation in reference to whiskey.

MR. PITTS—The reason why the liquor traffic has not been interfered with is that the Convention has that specially excepted. I want you to name a single instance of special or local legislation that is not prohibited under these 36 laws. Name one other—yes, there is one other, the game law, and that was tried to be put in, but was voted down. There are only two instances, yet this Convention says that no local law, however meritorious it might be, shall be passed by the Legislature. We ought to have some safety valve, and we ought to have some way of relieving it. If they are wrong there is a remedy. What brought into existence the Court of Chancery? How did it originate? Because the court of common law could not give remedies for the wrongs. This Chancery Court was established for the purpose of giving remedies wherein the court of common law could not give a remedy. What else can this great court do? It says that if it is not already provided for, if some emergency should arise it can be—

Mr. President, we have gone too far. I admit that the Legislature for the last ten years have enacted too many local laws, which is remedied by these 35 prohibitions. Now why say that the Legislature shall not pass any local law, don't make any difference how meritorious it may be, not at all unless the court shall say

that redress cannot be given? Now, this is a conservative body, I have watched it, and I have watched it closely. I have been tempted on several occasions to get up and address the Convention. I recognize the conservatism of this body, and I have refrained from consuming its time; because I assume it is conservative; and I believe this Convention yesterday evening in the hurry of adjournment, and without deliberation or reflection, passed this particular subdivision.

MR. O'NEAL. Gentlemen of the Convention I desire to say that the Committee on Local Legislation studiously avoided in their report any reference to the liquor question. While a great many members of the Committee believed that the regulation of the liquor traffic, could be secured by general laws by which the present system of local option or dispensary could be continued in counties and cities of this State, yet they deemed it wisest at this critical juncture in the affairs of the State to omit all mention of that question and leave it to the legislature to pass any local or special law on that subject that they might see proper. We recognized the fact that the paramount purpose of this Convention was to reform our suffrage and hence we thought it unwise to inject into the Constitution any question which might cause division and antagonism among our people. For that reason there was no mention made of the liquor question in the report. Yet notwithstanding our assurances certain delegates in the Convention have refused to accept the good faith of our statements. They imagine that behind some of the provisions of this report is some masked battery directed at the dispensary or liquor question. Some members are in a state of nervous tension bordering on nervous prostration for fear that we will attack the liquor question and interfere with the right of certain localities to establish dispensaries. We are between the two fires. On the one side are the dispensary advocates and on the other side those who favor allowing any city in this State to use the general funds of the State for their public schools. That is the position we are in. If we attempt to placate the dispensary men we are met by the gentleman from Mobile who says that we are intrenching upon their privileges, and franchises to appropriate the money of the State to the local schools.

Mr. Boone here arose to his feet.

THE PRESIDENT—Does the gentleman from Lauderdale yield to the gentleman from Mobile?

MR. O'NEAL—Not now, sir.

MR. BOONE—I want to state that Mobile makes no such claim.

THE PRESIDENT—The gentleman will be in order. The gentleman from Lauderdale declines to yield.

MR. BOONE—I did not hear him. I beg pardon. I meant no disrespect to the President or the Convention.

MR. O'NEAL—On one side, as stated by the distinguished gentleman from Jefferson, are the forces of the moral reformers and as stated by the other gentleman from Jefferson are arrayed the great forces of organized greed. Now you are willing, in order to perpetuate the system in Mobile, to strike down some of the safe-guards embodied in this Constitution. You are willing to ruthlessly sacrifice some of the most important bulwarks that protect the rights of citizens against corporate greed and rapacity in order to frame this Constitution to suit the needs of a certain city in this State. Now gentlemen, if you propose to make that the issue, I am ready to meet you. If you propose to strike down the safe guards of this Constitution and shape it and mould it to suit the desires of one city, in order that all other cities in this State can lay their hands upon the moneys of the common schools of Alabama, then take the responsibility. I desire to say upon the part of this Committee that we protest against this action. You have the power to do it. You formed this unholy alliance the other day. What did the Committee do the other day? They read you a provision providing that no special franchise should be conferred upon corporations, individuals or associations. The dispensary men say "we object to that because you use the word city, municipality and county; that it might interfere with the legislature granting a city or a municipality the privilege of establishing a dispensary. We answered that proposition by saying that the highest tribunals in the State have declared that the right to establish a dispensary is not a privilege. It is a transfer by the State of a part of its police power to a political subdivision of the State. But if that is the only objection we will strike out cities, municipalities, or counties. We struck it out, yet after we struck it out, after we placated the dispensary men, uprose the hosts from Mobile to lay the whole section on the table. Now there is this unholy alliance which seems to prevail in this Convention. You strike down the provision which leaves the people of Alabama open to the legislature to pass any local law granting special privileges and franchises and rights to a few favored individuals or corporations in this State. I say when you strike down that provision, in my judgment you say to every corporation in Alabama, "come to the legislature, they are authorized to grant you any special law or exclusive privilege." This convention has sanctioned it. It has in solemn convention stricken down a safe-guard which has been in the Constitution of Alabama for over a quarter of a century. Now I will say to the friends of the dispensary that I am perfectly willing after this article is reported to put in a general provision

that nothing in the foregoing article shall prevent the legislature from passing any laws regulating or prohibiting the liquor traffic in this State; but you are not satisfied with that offer. No, the gentleman from Henry says there is a masked battery behind every provision of the repeal, there is some secret purpose upon the part of this Committee, which has not been declared. Our motives are impugned. Couldn't I say with the same justice, if I was disposed to question the motives of the delegates on this floor, which I am not disposed to do because I believe that every delegate in this Convention is actuated by the highest and most patriotic motives to do that which will subserve the best interests of Alabama. To question the motives of certain gentlemen and to say with equal propriety that you are masking behind this great moral reform in order to confer upon corporations privileges and franchises which they ought not to have. Couldn't I say it with equal propriety because why didn't you agree to amend it? Here is the provision you strike out. Let me read it to you:

Sec. 14. Granting any exclusive or special privilege, immunity or franchise whatever, to any individual, private corporation or association in this State."

I offered an amendment yesterday morning limiting that to private individuals and corporations, didn't I, and you struck it down? I excepted cities and counties. The gentleman says haven't we enumerated every possible subject of local legislation—

THE PRESIDENT—The time of the gentleman from Lauderdale has expired.

MR. O'NEAL—I would like to be allowed to read one section.

THE PRESIDENT—Read the section.

MR. O'NEAL (Lauderdale)—Here is one that you "shall not grant to any corporation, association or individual any special or exclusive privilege or immunity, or to any corporation or individual the right to lay down a railroad track. That is found in the Constitution of twenty States, and you have stricken it out from our Constitution.

MR. HENDERSON—I desire to call the attention of the gentleman from Dallas to the fact that in the thirty odd subjects the Legislature is prohibited from passing of local laws already adopted by this Convention, that section two covers every other subject, in my opinion, that would possibly refer to the Legislature passing local laws, and if the members of this Convention will read that section I think they will agree with me on that subject. I desire to yield my time to the gentleman from Mobile on this subject.

MR. SANDERS—I move that the time of the gentleman from Lauderdale be extended five minutes in order that he may conclude his remarks.

THE PRESIDENT—Does the gentleman from Pike yield to the motion to extend the time of the gentleman from Lauderdale?

MR. HENDERSON—Yes, if the gentleman from Mobile shall have the balance of my time.

THE PRESIDENT—The chair can not parcel out time so far ahead.

MR. HENDERSON—Then I yield to the gentleman from Mobile.

MR. SMITH—If this is in order—

THE PRESIDENT—Does the gentleman yield to the gentleman from Limestone?

MR. SMITH (Mobile)—No sir, unless I am to be recognized afterwards.

THE PRESIDENT—The chair does not care to make any contracts with reference to the disposition of the time.

MR. SMITH (Mobile)—I appreciate that.

THE PRESIDENT—The question is does the gentleman from Mobile yield to the motion to extend the time of the gentleman from Lauderdale.

MR. SMITH (Mobile)—I do not.

MR. SANDERS—I would like to amend my motion, by moving that upon the conclusion of the remarks of the gentleman from Mobile, the gentleman from Lauderdale be recognized.

THE PRESIDENT—In the opinion of the chair that motion will be out of order.

MR. O'NEAL—I do not care to impose upon the Convention, but I have not had an opportunity to discuss one phase of the question.

MR. CUNNINGHAM—I rise to a point of order that the question before the Convention is one of reconsideration, and therefore not an amendment, and hence the gentleman from Lauderdale as the chairman of the committee has half an hour to discuss the question.

THE PRESIDENT—In the opinion of the chair the point of order is well taken. The chair was in error in calling time upon the gentleman from Lauderdale, as the thirty minutes that he

would have been entitled to had not expired. Therefore the chair was in error in recognizing the gentleman from Pike. The chair was under the impression for the moment that the Convention was discussing this matter as upon amendment.

MR. SMITH (Mobile)—And recognizing the gentleman from Pike I take it the chair will recognize the gentleman again—

THE PRESIDENT—The chair will take his chances on that and see how he comes out.

MR. O'NEAL—Mr. President, and Gentlemen of the Convention, I desire to say that there was no disposition on the part of this committee to interfere with the right of the great city of Mobile, to continue the appropriation of the liquor licenses to her public schools. We did not propose in our report to raise any question in reference to that subject, but we do say to the people of Mobile, if in order to perpetuate that system you want to shape and mold the Constitution of the State of Alabama, so as to incorporate in the fundamental law, provisions which in our opinion are vicious, we will resist you to the bitter end. Now that seems to be the purpose, so far as I can judge from what has been done.

Now, in reference to this particular section, and I want to call the attention of the Convention to the fact that the motion to reconsider embraces the latter part of Section 1. What change have we made from the old Constitution? We have absolutely made but one change. The old Constitution says that no special, private or local law shall be enacted in any case which can be provided for by the general law. Mark you the difference—which can be provided for by general law—so that the advocate of a dispensary when he comes to Montgomery to secure the location of a dispensary in his city could not be met with the response that that subject can be provided for by a general law, but he could only be met with the objection it is provided for by general law, and if it is provided for by general law how could you enact any local law upon the subject? Now we make another provision. The Supreme Court in the case cited in 60 Ala., decided that under this provision which said no special law shall be enacted which can be provided for by a general law, it was a matter purely within the legislative discretion to determine whether it might be provided for by a general law, hence the effort of the framers of the Constitution to strike down the evils of local legislation were rendered fruitless and abortive by that decision, and yet today, after a quarter of a century under which the evils of local legislation have grown to an alarming and dangerous extent in this commonwealth, we are asked practically to re-enact the same old provision in the Constitution of 1875, which every man on this floor admits to be absolutely nugatory.

MR. PITTS (Dallas)—Does the old Constitution contain a single one of the thirty-five provisions that you are now putting in the Constitution?

MR. O'NEAL—That question has been asked twenty-five times. In reply I would say of course it does not. We are here to remedy evils and not to perpetuate them.

MR. PITTS—I desire to ask if you can enumerate a single thing out of the 35 put down there?

MR. O'NEAL—Yes; I will name you from the Constitution of other States hundreds of subjects if it did not consume too much of the time of the Convention—regulating courts of justice, for the assessment of paving, for supporting common schools, for vacating streets and alleys, laying out, opening and working roads, game regulations, fish regulations, and hundreds of subject that are not in our report.

MR. BOONE—I desire to ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield?

MR. O'NEAL—Yes, I yield to one question.

MR. BOONE—The gentleman stated some minutes ago with some vehemence that corporations could come here now to the Legislature and get an exclusive privilege from the Legislature?

MR. O'NEAL—Yes.

MR. BOONE—Did the gentleman overlook Section 23 in the Declaration of Rights adopted by this body?

MR. O'NEAL—No sir, I did not.

MR. BOONE—Declaring 'that no ex post facto law, or any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges of immunities, shall be passed by the General Assembly; and every grant of a franchise, privilege or immunity, shall forever remain subject to revocation, alteration or amendment.' Now in the 9th section on Local Legislation it provides: "Exempting any person, corporation, county, township, municipality or association from the operation of any general law."

MR. O'NEAL—I called the attention of the Convention to the difference between these two sections on yesterday, and it will occur to any lawyer who gives attention to the language of the section, to readily see the difference, and I call my friend's attention to it from Mobile. The preamble says you shall not grant any exclusive privilege, but the preamble does not say that you shall not grant a special privilege.



MR. BOONE—We argued that on yesterday.

MR. O'NEAL—I say under the preamble you can grant a special privilege provided it is not exclusive. The preamble does not use the word franchise, there is absolutely no such word as franchise in the preamble. If franchise and immunity mean the same thing it would not be necessary, but we do not think it does.

MR. BOONE—I would ask the gentleman——

THE PRESIDENT—Does the gentleman from Lauderdale yield to the gentleman from Mobile?

Mr. O'Neal declined to submit to any further interruption.

MR. O'NEAL—The two provisions are entirely different, and an examination by any attorney will show that there is a difference. One prohibits the granting of an exclusive or irrevocable privilege, but it don't prohibit the granting of a special privilege. Now Mr. President, we strike this out and what position are we in? The Legislature can grant a special privilege to any corporation in Alabama, and that is what we have done in obedience to a sentiment which should not dominate the Convention. We are laying down laws for half a century, and we ought not to put in the Constitution any principle which we cannot sustain before the people of Alabama, in order to placate any particular interest in this State. Now I say to the gentleman from Henry, if you strike down this provision as to local laws, you will emasculate the entire provision. Section 26 says "No special, private or local law, except a law fixing the time of holding courts, shall be enacted in any case, which is provided for by a general law." The argument was made on yesterday, that this provision might jeopardize vested rights, that a person or corporation might secure a local law and that afterwards the Circuit Court would declare it unconstitutional on the ground that it was provided for by general law. If that be true no vested rights can be effected because if you secure a local law on any specified subject on which you make an outlay of money, and the court should hold that the local law was void, because provided by general law, how can you be hurt—the general law would protect you, absolutely so. Hence the argument on that ground is absolutely without any merit. Ah, no, the sole purpose of this is to strike out this provision for fear of some possibility or probability it might at some future time affect a dispensary. I beg you, before you pass on this section to pause and hesitate before you strike down this most important safeguard.

MR. FITTS (Tuscaloosa)—The distinguished gentleman from Lauderdale has seen fit to say that whenever these exceptions are mentioned whenever an attempt is made to widen this proposition so that the State of Alabama may be advanced morally, that there is a certain element on this floor that become nervous and almost

has nervous prostration. I desire to say if anybody on this floor has shown signs of nervous prostration it has been the fury of the gentleman himself when he meets that disposition on the part of this house, and the temper which he has displayed. I desire to say that the banner of moral reform is up in Alabama, and that a proposition to leave room for moral growth does stand here, and that the gentleman from Lauderdale, or the gentleman from the Local Legislative Committee, or any other committee, will be met and he will be called upon every time he attempts to law down a hard and fast rule which threatens the onward march of the dispensary or prohibition.

MR. O'NEAL—Will the gentleman permit an interruption? I said on behalf of the Committee I was willing, and the Committee was willing to accept a proposition that this section should not be applicable or control the sale of whiskey.

MR. GILMORE—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. GILMORE—The gentleman from Lauderdale did not address the President.

THE PRESIDENT—The point of order is well taken.

MR. FITTS—It is the complaint every time we ask room for this reform that we ask for leaway, that the friends of the dispensary system rise up. I desire to say that we do rise up. I desire to say that with these other ample limitations set here, there is no rhyme or reason for putting anything in the Constitution that will make it questionable in the future as to the power of the people of Alabama to absolutely prohibit the sale of liquor even within a half square mile in the black belt, if they desire it, and there is no rhyme or reason for putting into this Constitution anything that will prevent the people in any locality from establishing dispensaries whenever and wherever they please. We are taking this issue with the gentleman, and he desires to leave the impression here that advocates of the dispensary have formed some hidden combination with the advocates of some corporation that desires something improper at the hands of this Convention. I desire to say that I have never heard of such a combination, and that it exists only in the fertile brain and excited imagination of the chairman of this committee. I desire furthermore to say that whenever—

A VOICE—Louder!

MR. FITTS—That is all right about the louder part; I am going to say what I propose to say upon this subject of dispensary right here and now, and I don't care whether gentlemen holler

"louder" or not, I mean for it to be heard. Because objection is made about these limitations it is complained that it comes from the dispensary element. If there is a probability that it might inhibit a dispensary that is reason enough for leaving it out, and furthermore the proposition that there is a great hidden mystery or some combination of which he speaks, exists only in his own imagination. He says that if the advocates of the Mobile school attack him—he makes some great threat of what he will do then. They can draw a ring and fight it out so far as I am concerned, but as one of the advocates of the dispensary, as one of those who does care about anything likely to the growth of this movement in this State, or the restraint of the liquor traffic in this country which will send the money into the general sources of revenue. I can say we should be watchful and guarded to see that nothing is put in here to threaten the life of these institutions, and the very disposition that the gentleman shows to fight with so much vigor, and to abuse with so much venom in this particular instance is a very good reason for being on the watchtower and upon guard.

MR. O'NEAL—May I interrupt the gentleman for a moment?

THE PRESIDENT—Does the gentleman from Tuscaloosa yield?

MR. FITTS—Certainly.

MR. O'NEAL—Didn't I expressly disclaim any intention to impugn the motives of any gentleman or make any charge?

MR. FITTS—And at the same time the very words you used, and your manner was a greater accusation in that regard. And I say that even if there is a municipal corporation in this State, where the proceeds of the liquor traffic goes to the upbuilding of schools—in Mobile or elsewhere, where the revenue derived from the liquor traffic goes towards education, that it is a step in the right direction, and that it ought to be left wide open, abundant leeway for local laws to be passed to allow that revenue to go to the education of the children of this State in other localities in the future. The very best dispensary argument is that the abundant profit which is taken by the saloon keeper and by the dram-seller is taken away from the individual and put into the revenues of the State and county, and a portion of it devoted to the education of the children of the county, therefore, whether in Eufaula or Mobile that is a good system which accomplishes this. This is a system which is a twin brother of the dispensary, and the same hand which would guard the dispensary from the attack of any law that would bind it down and prevent its being built up in localities, ought to watch and guard the local laws which take a profit from this traffic and devote it to the education of the children. The time has come in Alabama when this is a live and vital question, when the people of Alabama have their eyes upon the

dispensary project, when it is on trial in many counties of the State. It is a system that has never been abandoned in any country of Europe, in any State in America or in any locality wherever tried. It is a plan that has met the approbation of the people of Alabama whenever tried, and there is no reason why there should not be abundant room for local laws to put it in force in every locality where it may turn out to be desirable, and there is no reason to abuse the friends of that reform, or the friends of any locality which adopts it. This committee can have no righteous or good reason for putting any limitation here that does not subserve the public interest, and I submit that such a limitation as will strike down these efforts for moral reform, or will strike down the vested rights of Mobile, Eufaula or any other locality that is devoting the income from the liquor traffic to the upbuilding of mankind would be a limitation that would be an impairment of the future growth and prosperity of the State.

MR. SMITH (Mobile)—Mr. President, nothing that has occurred in this Convention has taken me more by surprise than the attack which has been made by the gentleman from Lauderdale upon myself and upon my city. I had not spoken in regard to this particular section, nor had I taken any active part either in the defeat of it or in its reconsideration. I was opposed to it, not because I believe that the interests of Mobile's school system were involved in this particular section, but because I thought it unwise. Unlike the gentleman from Lauderdale, I did not believe at that time that there was some personal or malicious motive, in the attempt of gentlemen to put upon this Convention what I personally deemed to be an unwise provision in the Constitution of Alabama. The gentlemen, however, has seen fit to charge that there has been an holy alliance between the dispensary men and the advocates of the schools of Mobile, masking, as the gentleman says, the desire to take from the public treasury money for the upbuilding of the interest of a private corporation; under that guise as he says, trying to strike down the safeguards of the liberty of the people that he, the great Chairman of this Committee, has inserted for their protection. Mr. Chairman, I desire to say that in the first place there is no masking in any controversy that I may raise in this Convention or on any issue that I may make with the gentleman upon this or any other question that may be presented for discussion. In being opposed to certain provisions of the article I have objected, not behind any masked battery, but upon the ground frankly and openly stated that they did affect the schools of Mobile. I have given to this Convention a full and fair statement of the reason why I desired to protect the system, and I asked this Convention, upon the facts there stated, to protect that interest by making amendments to certain sections. Why it is that from my course the gentleman should judge that I was hiding or dodging or fixing any secret provision I am at loss to say. I do

not believe that the Committee on Local Legislation participated with the gentleman in the denunciation that he made of the school system of Mobile. I believe that the denunciations of the Chairman are those of the individual and not of the Committee, and I therefore have no quarrel with the Committee or with its report on account of the charges that the gentleman has made. So far as the alliance is concerned, my friend from Barbour spoke to me in regard to clause 9, and called my attention to the fact that the interest of his county, and of my county were the same, conferred with me as to opposing that section, and I agreed with him that our interests were the same and that we should oppose it, and we did oppose it. And that, and that alone, is the holy alliance that the gentleman refers to, but the gentleman on the contrary, although he here declares that it is wrong in principle to take dispensary money and apply it to the common schools, gets up in this Convention and makes an open bid for an alliance with gentlemen in arraying the dispensary interest against the city of Mobile. He gets up and declares that if they will help him in his attack on my county and city that he will put almost anything in his article to protect the dispensary law. Judge, then, gentlemen of the Convention, between us as to who it is that is willing to trade away the safeguards of the people in order to accomplish his purpose—my purpose being the protection of my people, his purpose being the protection of personal pride as the author of an article that he offers to this Convention. Mr. President, that is all that I have to say upon the personal attack that the gentleman has made, that is all that I have to say in regard to the school system of Mobile on this occasion. I expect the gentleman is personally piqued, not because it is in the interest of the people, nor because it is his duty to be so, but because I dared to vote against the provision, he threatens to make a determined fight against a great school system, and as the gentleman says, when that issue comes I have no doubt that he will attack it consistently from a feeling of personal anger, and I, gentlemen, will be here to join him in the controversy and submit the issues to this Convention. Now, Mr. President, so far as the merits of this article are concerned I desire to say a few words. It was not my purpose to have anything to say on the subject, but being upon my feet, I am unwilling to take my seat and leave the impression that the question is only one of local interest. These gentleman have, as has been repeatedly said designated every subject matter of local legislation that their imagination could conjure up and then they forbid any legislation on all other local subjects and provide that the legislature shall pass no other local acts that is provided for by general law, or where a remedy can be given by the courts. Mr. President, you nor I, nor any man can foresee the necessities of the future. If we were able to prophesy what those necessities would be there would be no necessity for a legislative body meet-

ing every two or four years. If we all had the foresight and wisdom that the gentleman from Lauderdale arrogates to himself, we would look down the dim vista of the future and see what the demands would be for the next fifty years to come, and this body would here codify a set of laws to guide the people prosperously into a Utopian government, free from all troubles, embarrassments and difficulties. Unfortunately this Convention has not that prophetic power, and I do not believe that there is a man in the Convention who has it save the Chairman of the Committee on Local Legislation. It is for the purpose of meeting contingencies as they arise in government affairs from time to time that we have a legislature. It is because of the lack of this prophetic power that we have the legislature to meet. It is one of the co-ordinate branches of government, and its purpose is to enact laws from time to time to meet contingencies that this great Constitutional Convention cannot now foresee. If we say you shall not do this and that, and shall not do anything else, what have we done with the prerogatives of the Legislature? We have declared the provisions for the formation of our government when first organized are mistakes; that it is not necessary to have any legislative body; that what is necessary is a Constitutional Convention and courts thereafter to hold the Legislature down and prevent them from exercising the prerogatives that have been vested in them. Mr. Chairman, I believe that it is unwise. I believe that the great safeguard that my friend has erected is no safeguard, but is a folly, and I do not believe in accepting that folly simply because a gentleman is so sensitive to any objection that may be made to his views by another delegate in this Convention. Besides that Mr. President the provision is sure to be the cause of unlimited controversy between our people over their rights. When a man goes before the Legislature conceiving as he may that what he desires is not provided for by the general law, conceiving as he may (it may be under the advice of the very wise gentleman from Lauderdale) that there is no remedy in the courts, and presents a question to the Legislature, the Legislature may say to him that his purpose is provided for by general legislation or that he can obtain it through the courts, he may reply that he has been otherwise advised. The Legislature may ask by whom are you advised and he may reply the gentleman from Lauderdale advised me; the Legislature may reply, well then, there can be no mistake about it, there is no general law.

He has demonstrated in the Constitutional Convention that he not only knew all the law that existed at that time, but all the law there ever would be. The man has no remedy in court under a general law, he then asks for a special act of the Legislature to protect these rights and equities; he invests his money upon the faith of it, his rights become involved and his property, and litigation arises, and it may be that he has staked his whole fortune,

and the courts come along and say the Legislature was mistaken, there was a general law, or there was remedy in the courts and the Legislature was mistaken; it may be that while there was no general law and yet the courts may hold that it knows, and would have decided this way or that way if he had applied to it; the court may even say that the learned advisor applied to was mistaken. Then all the citizen has is sacrificed, the Legislature has acted and it is composed of honest men and acting upon their own opinion they passed the law in good faith, local legislation has been had, and the only resort is a litigation over the right and destruction of property interests of the citizens. Gentlemen of the Convention, it seems to me that they have gone too far, it seems to me that you are putting too much confidence in the judgment and prophetic power of the Chairman of the committee. It seems to me that it is time for him to pause and think and become more conservative and restore to the Legislature some of the functions that this committee has undertaken to rob it of.

MR. deGRAFFENREID—This discussion has been broader than I think the circumstances justify. I rise for the purpose of supporting the motion to reconsider, not as the friend of a dispensary because I know nothing about dispensaries, not as a friend of the liquor men because I know nothing about them, and not even as a friend of the school system of Mobile. I desire to say, however, that I have always believed that, so far as the liquor traffic is concerned, the only way that it can be successfully handled in Alabama is by letting each community by local laws, declare how it shall be handled, and that so far as the school system of Mobile is concerned, it was established by the people of Alabama before I was born and that it has done much good in this State. Whether that school system was rightfully or wrongfully established, it now exists, and rude will be the hand that will undertake to strike it down. If the question is ever raised before this Convention, I shall be found with those who shall undertake to prevent any person placing an impediment in the path of any educational institution already established in this State. As has been said by the gentleman from Dallas in discussing the proposition before us, it is a very grave question as to whether this Convention has not gone too far. We have provided 37 or 38 articles, I don't remember the number, upon which there has been placed an absolute prohibition on the Legislature and as to which there cannot be passed any local law. In addition to that—in my judgment—the greatest safeguard on this subject that has been placed in the Constitution we have provided that no local law shall be passed, unless there has been given before its passage thirty days' notice of the substance of the proposed law, by advertisement in a newspaper, and that this fact shall affirmatively appear upon the Journal before it shall be given validity by the courts. When we did that, gentlemen, we went

far enough. A government dependent upon the Legislative Department is the freest government in the world. When you trammel the Legislature you touch the liberties of the people. I am reminded that across the waters there exists a government, the oldest in the world, the freest save our own, and its parliament is untrammelled by any written constitution. It is a law unto itself. Its Parliaments have not only seen fit at times to take unto itself the power to change the succession of the Kings, but it has even sat in judgment upon the monarch even to the taking of his life. That government today is the arbiter of the peace of the world, and its power and its dignity are due to the power and the dignity of its Parliament. It has been said, gentlemen, that this committee has examined every Constitution in the United States, and from them has gleaned the various subjects prohibited to local legislation, and has placed them in the report now being considered. I shall ask the chairman if there was found in any Constitution in the United States or in any Constitution of an intelligent State, the provision that the courts and not the Legislature, shall determine whether or not a general law exists or the courts can furnish a remedy where a remedy is sought or a right established by a local law. I say that there is no such provision in any Constitution of any State of the Union or of any intelligent State anywhere. My objection to this Section as passed on yesterday is not because it touches the liquor traffic in any way, not because it touches any school system anywhere, but that it provides the most fruitful source of litigation that can possibly be provided by the Constitution of a State. The Supreme Court of Alabama decided wisely when it declared that under the Constitution of 1875 it was for the Legislature and not for the courts to determine, when a local bill was before it, whether a remedy had been provided by a general law or could be obtained through the court. That in my judgment was one of the wisest decisions that was ever handed down by the Supreme Court of Alabama. It shut a broad door to litigation, and when we leave here, Mr. President, we want to leave with a Constitution about which there shall be as little doubt as possible, so that the courts will not be called upon for fifteen or twenty years to tell the citizens of Alabama what their rights are under that Constitution. I have consistently, whenever I had any doubt upon any subject, voted against any change, and frequently, although the change offered might be good—where I saw intelligent men in this Convention differing upon the subject—I have acted upon the proposition that wherever there is a doubt it is best to take the safe course and voted against. We are establishing a fundamental law that can not be changed like a legislative enactment and we should never lose sight of that fact.

MR. O'NEAL—I rise to a question of personal privilege. In my opening remarks I expressly disclaimed any purpose to im-



pugn the motives of any delegate in this Convention. I expressly and emphatically stated that I did not doubt that every member of this body was actuated by the highest, most patriotic and most conscientious motives. Notwithstanding that statement, the distinguished gentleman from Mobile has seen fit to make a personal assault upon myself, and to state to this Convention that I am essaying the role of a prophet, and that I am seeking to dictate what action they shall take in this matter. I protest that there is nothing in what I said which would warrant any such construction. I do not think this is a proper forum to bandy epithets with any gentleman, but if the gentleman from Mobile meant to intimate that my motives were not as conscientious and that my purposes were not as high as his own or any other delegate's, he states what he knows is without foundation in fact and what was not warranted by anything in this discussion. He has attempted to make me the subject of ridicule, and to say that I am proposing to lay down the law to this Convention, and force them to adopt a provision against their judgment. I think that remark was unwarranted. I was simply undertaking to do my duty as my conscience dictated, and according to the lights before me. I was simply defending the report of my Committee, on grounds which I believed to be just and meritorious. I expressly disclaimed any intention to impugn the motives of any gentleman, but yet that declaration did not seem to satisfy the gentleman, and he has gone out of his way to make an assault upon me, which I think is absolutely as unwarranted as it is unjust, and I am surprised that a gentleman of his high character would do it under any circumstances. I stated to him expressly that it was not the purpose of the Committee to attack any law that now exists by which the city of Mobile used its liquor licenses for the public schools, but that they had made a combination to strike out a certain section. That is true and every gentleman knows it to be true. I did not say that he was a party to the combination, but the vote of every member from that district, indicated that such a combination had been made. I saw some gentlemen going around rallying the forces from that section and warning them to vote against the subdivision and here was a solid vote against the provision.

MR. SMITH (Mobile)—Permit me to ask the gentleman a question.

THE PRESIDENT—Does the gentleman from Lauderdale yield?

MR. O'NEAL—Yes, sir.

MR. SMITH (Mobile)—Did the gentleman not say in substance that the gentleman from Mobile was masking behind—at any rate engaged in a pretense of morality for the purpose of getting money that belonged to the State, for the schools of Mobile?

MR. O'NEAL—No, sir. I said certain gentlemen had impugned the motives of the Committee. That while we did not impugn the motives of any gentleman, that if we were inclined to follow their tactics, we might be justified in saying that behind the great moral reform some of them were attempting to grant corporations privileges that they ought not to enjoy. I said that we could, with as much force, say they were doing that, as they could say that we were concealing a masked battery which would operate against the dispensary.

I have no disposition to dictate to this Convention, or to compel them to follow any judgment of mine. I am simply a delegate, representing the people of Alabama, doing my duty as I understand it, and under the circumstances I do not think I should be the subject of such caustic remarks. I do not think this is a forum in which such remarks should be made; and I think it is beneath the dignity of a body of this kind to indulge in such unparliamentary conduct. I desire to say, if the gentleman from Mobile does question my motives being as high as his own, or as conscientious, he has gone beyond the bounds of proper debate, and his imputations I do resent. In making such imputations I desire to say he must have known they could not be sustained by the facts, but were absolutely and wholly without any foundation or basis.

MR. WILLIAMS (Marengo)—I rise to a question of personal privilege. The gentleman from Lauderdale has stated that the whole of the first district voted solidly to strike out Section 14.

MR. O'NEAL (Lauderdale)—That was my information.

MR. WILLIAMS (Marengo)—I do not want to go on record as voting against section 14. I voted for it and not against it; and I am from the first district.

MR. CUNNINGHAM (Jefferson)—I wish to say but very little upon the pending question. As I have perhaps been one of the humble instruments of stirring up this agitation, I feel that I owe it to myself and gentlemen who think as I do on the floor, to submit a few scattering remarks. I shall not approach the subject as a lawyer, for I have no technical knowledge, nor as a jurist, for I know nothing of the decisions of the Courts, but as an humble citizen, and one who understands plain United States. I disclaim at the beginning that I have any purpose to interpret the motives of the Committee. That was not a question for which this Convention was responsible. The real thing at issue was what did the report contain, and what did it do. That was the question, regardless of the motive.

Now I undertake to say, Mr. President, that the Committee has brought in a very able report. So far as local legislation is

concerned, it embraces the entire field. About thirty-five specific subjects they have shot at with a rifle, and rung the bell every time. After they got through with that, they have shot at the balance with a shot gun, and then they have turned loose a blunderbuss, and finally, with the fourth section, covered the whole thing down with a blanket.

It reminds me of a friend of mine who had a horse that would not stay hitched. It took three saplings, a double halter, a plank, some nails, and a blanket to hold him. The manner in which he hitched him was this. He took one rein and tied it to a sapling on the right, and the other rein to a sapling on the left; he tied his tail to the sapling in the rear, and nailed his hoofs to the plank on the ground, and after he got through with that he covered him with a blanket and pinned that down to the ground, and that horse never got away.

Now, there is no question with the adoption of the thirty-five subdivisions, and with section four of this article, that they have practically excluded all questions of local legislation with the possible exception of game. Now, Mr. President, I hope that this motion to reconsider will prevail. I believe that if we knock out the section which is now proposed to be reconsidered, and section four of this article, we would have a most excellent Article upon the question of local legislation. One in which there is sufficient elasticity to cover all the grounds, and all the issues that may possibly arise. In this connection, gentlemen, I desire to read to you a part of a section that has already been adopted in the bill of rights, and it is this: "That the judicial shall never exercise the legislative and executive powers, or either of them, to the end that it may be a government of laws, and not of men."

With the limited experience that I have had in the legislature, I know that the purpose of the Committee on the judiciary, is to pass upon the constitutionality of questions. Now, instead of this Committee passing upon this question, it is to be left to the courts in this particular section. Not in a general way, as applied to all of our statutes, but in a particular way as applied to local legislation, and it seems to me that we set at defiance the ordinance already adopted in the bill of rights. That being the case, I want the legislative and the judicial departments kept distinct, as we have already adopted in the bill of rights. I hope that the motion to reconsider will prevail, and then I hope the Convention will knock that entire section out.

MR. WATTS—Mr. President, I think there is a total misapprehension in this matter. There is no desire on the part of this Committee to throttle anybody; we are simply trying to perform our duty in the matter which was submitted to us. We were appointed a committee to cure the evil of local legislation, and I must

confess that we started out with a view of stopping up every possible gap which the Legislature could get through on this question of local legislation. This report is not aimed at liquor or dispensaries any more than it is aimed at any other thing. It is aimed at local legislation; it is aimed at the Legislature taking up its time in passing on purely local matters. The committee has indicated that it is willing in order to satisfy these gentlemen who say so much about liquor, by incorporating an amendment in Section 4 which will say that as to liquor laws the Legislature may pass them by giving the notice which is mentioned in Section 2. That ought to satisfy any reasonable man. I have noticed, Mr. President and gentlemen of the Convention, that there are a great many sore toes in this Convention, and that no matter what the subject broached, one is always treading on somebody's sore toe without ever knowing that you were within a mile of it. Now, as to the proposition advanced by my distinguished friend from Jefferson and my distinguished friend from Limestone, that this provision would be in contravention of that provision of the Bill of Rights which said that the Executive and Legislative and Judicial Departments should be separated. I respectfully differ with them, and insist that it is but carrying out that provision. If we were to delegate to the Legislature to determine whether or not a matter of local concern which was introduced before them had already been provided for by general law or delegated to them the right to determine whether or not it could be provided for by any court, that would be investing the Legislature with the functions of the Judiciary and violating the very provision which the gentleman refers to, and putting this provision in here that the courts and not the Legislature shall determine whether or not a matter is provided for by the general law, or has been or can be provided for by a court, you simply give to each department its peculiar function and do not infringe upon that of the Legislature. Now, Mr. President, this matter has taken a wide range; has been a great deal said here that has no reference whatever to the matter under discussion; a great deal has been said about dispensaries and about liquor laws and the Mobile school law. This Convention must bear in mind that this law is not retroactive; it does not repeal any local law now in existence; it does not lay its hand on any local interests which have already been protected by the Legislature, but it simply says that in future the Legislature shall not pass local laws except under the conditions of this Article; and it may repeal such as are now in existence by pursuing the same forms which would be necessary to pass a new law, and I submit, Mr. President, that it is not improper for this Convention to say to the Legislature, in view of the past history of this State, that whenever a matter of local concern is proposed to you, you shall not judge whether or not that is provided for by general law, or whether it can be provided for by any court, but the court

shall determine that question, and you shall not pass any law which is already provided for by the general law, and you shall not pass a law which can be provided for by the courts. As an illustration, I was informed that in a recent session of the Legislature, a bill was introduced to relieve a minor 20 years of age of the disabilities of non-age. Now there is a general statute upon the books that any minor over the age of 18 years can, by application to the Chancellor, with proof, be relieved. Why, then, was it necessary for the Legislature to take up the public time, and, at the public expense to grant to this minor the removal of his disabilities, when it could be done for \$15 or \$20 through the courts. If this provision had been in the Constitution at that time, no such provision could have been considered, and the object of this is because the Supreme Court had decided that the provision in the old Constitution, which we have copied here, must be construed as giving the Legislature the sole power of judging whether or not a law is provided by general law, or the relief sought can be granted by any court, and this provision is to put it in the courts instead of with the Legislature, and if we were to adopt the old provision of the Constitution, without this addenda to it, we would be held to have agreed to the opinion of the Supreme Court, and agreed that hereafter the Legislatures might determine these things for themselves. I submit that when we put an amendment to Section 4, which is to come up for consideration, that the Legislature may pass local laws as to liquor by giving the notice provided in Section 2, that that is all that any fair man can ask in reference to liquor, and I submit, Mr. President, that this discussion has gone far enough, and I move the previous question.

MR. BULGER—I desire to ask the gentleman a question? What becomes of vested rights under the law passed by the Legislature before the court passed upon the question as to whether it can be provided for by general law?

MR. WATTS—I answered yesterday; there are some lawyers in every Legislature who will know whether a particular measure is covered by a general law, or whether the relief sought can be granted by a court. The provision is not that the matter could be provided by a general law, but whether it is, and any lawyer can tell whether it is provided for, although nobody could tell whether it could be provided for.

MR. WHITE—I wish to ask the gentleman a question. Do I understand from the committee that in the event this motion to reconsider is not carried, and this section is allowed to remain in force, that the committee will then offer an additional section or provision saying that this shall have no application to the enactment of any local law for the regulation of the whiskey traffic?

MR. O'NEAL—I desire to state that I will introduce a section of that kind, as I have repeatedly stated.

MR. WATTS—I desire to answer the gentleman's question. We are willing to say that the passage of local laws in reference to liquor shall be passed in accordance with Section 2, but not that it shall be passed notwithstanding this article, because that would enable the Legislature to pass any liquor law regardless of whether the notice is given or not, and we want notice given for every liquor law that is passed.

MR. HEFLIN (Chambers)—If it is the purpose of the committee to introduce a new section to cover this, why not reconsider this section and adopt an amendment like this which the gentleman from Henry has written: "provided that nothing in this section or article shall affect the right of the Legislature to enact local laws regulating the liquor traffic."

MR. WATTS—I have already answered that the objection is to the words "or article," which would give the Legislature the right to pass a liquor law without giving notice. We are perfectly willing that a local liquor law may be passed provided that the notice is given provided in Section 2.

MR. LONG (Walker)—You stated that the lawyers in the General Assembly could advise the General Assembly as to what laws they should have the right to pass. Would not the effect of that be to turn over the Legislature to a few lawyers to advise and run the Legislature, instead of the representatives of the people.

MR. WATTS—It would not.

MR. LONG (Walker)—You take it for granted that all lawyers know all the general law? Know all the law?

MR. WATTS—No, it is not a fact that all lawyers know all the law.

MR. LONG (Walker)—Just those that go to the Legislature?

MR. WATTS—I think if you ask any lawyer that pretends to be a lawyer, that he will tell you that he don't know all the law.

MR. LONG (Walker)—That is what I thought, only those that go to the Legislature are competent to advise?

MR. WATTS—No. I want to say that there are lawyers in every Legislature, and those who are not lawyers ask the advice of those who are as to whether or not a matter was already provided for by a general law, and they could turn to the code of Alabama and the acts passed since the code and see whether or

not that matter was provided for, and they could answer yes or no, and the question could be also asked, can this matter be provided for in a court, and he could turn to the code again and ascertain.

MR. LONG (Walker)—That would have the effect of letting a lot of lawyers run the Legislature?

MR. WATTS—Not at all.

MR. HEFLIN (Chambers)—I will ask how will this amendment suit, if this is added to the end: provided that notice is given as required in Section 2 of this article?

MR. WATTS—I think that would be satisfactory, and I am willing now to ask a suspension of the rules and pass that section.

MR. HEFLIN (Chambers)—I call for the previous question  
The main question was ordered?

MR. WATTS—In the reconsideration I call for the ayes and noes.

A reading of the section being called for, it was read as follows:

No special, private or local law, except a law fixing the time of holding courts, shall be enacted in any case, which is provided for by a general law, or when the relief sought can be given by any court of this State, and the courts and not the General Assembly shall judge as to whether the matter of said law is provided for by a general law and as to whether the relief sought can be given by any court; nor shall the General Assembly indirectly enact any such special, private or local law by the partial repeal of a general law.

MR. WATTS—I want to call the attention to the fact that the whole of Section 1, of which that is a part, has been adopted by this Convention, and we cannot entertain a motion to reconsider the adoption of a part of the section without reconsidering the adoption of the whole of Section 1.

THE PRESIDENT—In the opinion of the Chair this section was considered differently from other sections. It was considered subdivision by subdivision, and a separate vote was taken upon each, and therefore it seems to the Chair that the Convention might reconsider its action in the adoption of one subdivision without reconsidering the whole.

MR. WATTS—But the Chair forgets that there was a vote adopting the whole of Section 1.

**THE PRESIDENT**—The Chair does not so recollect. The Secretary states the Journal does not bear out the recollection of the gentleman from Montgomery.

Upon the call of the roll, the vote resulted as follows:

### AYES

Ashcraft,	Hefflin, of Chambers,	Parker (Cullman),
Banks,	Hefflin, of Randolph,	Parker (Elmore),
Barefield,	Henderson,	Pearce,
Bethune,	Howell,	Pettus,
Blackwell,	Hodges,	Pillans,
Boone,	Inge,	Pitts,
Brooks,	Jackson,	Reese,
Bulger,	Jones, of Bibb,	Renfro,
Burns,	Jones, of Hale,	Robinson,
Carmichael, of Colbert,	Jones, of Wilcox,	Rogers (Lowndes),
Carmichael, of Coffee,	Kirk,	Rogers (Sumter),
Cobb,	Kirkland,	Samford,
Cunningham,	Knight,	Searcy,
Dent,	Ledbetter,	Sentell,
deGraffenreid,	Long (Walker),	Sloan,
Duke,	Macdonald,	Smith (Mobile),
Eley,	McMillan (Baldwin),	Smith, Mac. A.,
Eyster,	McMillan (Wilcox),	Smith, Morgan M.,
Fitts,	Malone,	Sorrell,
Foshee,	Martin,	Stewart,
Foster,	Maxwell,	Tayloe,
Freeman,	Merrill,	Thompson,
Gilmore,	Miller (Wilcox),	Vaughan,
Graham, of Montgomery,	Murphree,	Weatherly,
Grant,	NeSmith,	Williams (Elmore),
Grayson,	Norwood,	Wilson (Clarke),
Greer, of Perry,	Oates,	Winn,
Harrison,	Opp,	

TOTAL—83

### NOES

Messrs. President,	Davis, of Etowah,	Howze,
Almon,	Espy,	Jones, of Montgomery,
Beddow,	Ferguson,	Kyle,
Burnett,	Fletcher,	Leigh,
Byars,	Glover,	Long (Butler),
Cardon,	Graham, of Talladega,	Lowe (Lawrene),
Carnathon,	Greer, of Calhoun,	Miller (Marengo),
Case,	Haley,	Moody,
Cofer,	Handley,	Norman,
Coleman, of Walker,	Hinson,	O'Neal (Lauderdale),
Davis, of DeKalb,	Hood,	O'Neill (Jefferson),



Phillips,	Selheimer,	Weakley,
Porter,	Spears,	White,
Proctor,	Spragins,	Whiteside,
Reynolds (Chilton),	Waddell,	Williams (Barbour),
Sanders,	Walker,	Williams (Marengo),
Sanford,	Watts,	Wilson (Washington),

TOTAL—51

## ABSENT OR NOT VOTING

	Craig,	O'Rear,
Altman,	Jenkins,	Palmer,
Beavers,	King,	Reynolds (Henry),
Bartlett,	Loklin,	Sollie,
Browne,	Lomax,	Studdard,
Chapman,	Lowe (Jefferson),	Willet,
Coleman, of Greene,	Morrisette,	
Cornwall,	Mulkey,	

MR. SANDERS—I have an amendment offered by the committee. The amendment was read as follows: Amend Subdivision 26 by adding thereto the following words: "Provided that nothing in this section or article shall affect the right of the Legislature to enact local laws regulating or prohibiting the liquor traffic. Provided, that notice is given as required in Section 2 of this article."

MR. WILSON (Clarke)—I desire to offer an amendment to the amendment.

The amendment was read as follows: Add to the amendment by striking out the words "and the court and not the General Assembly shall judge as to whether the matter of said law is provided for by a general law and as to whether the relief sought can be given by any court."

MR. HARRISON—I sought recognition, Mr. Chairman, but the purpose for which I rose could not now be accomplished, as there is an amendment to the amendment.

MR. ROBINSON — The amendment of the delegate from Clarke is the identical amendment which was laid on the table yesterday.

MR. WILSON (Clarke)—I desire to say that it is not the same. With this amendment that I now offer is the amendment of the delegate from Limestone and the two are coupled together so that that makes a difference.

MR. ROBINSON—There was a motion yesterday to strike out those identical words.

MR. SANDERS—I move to lay on the table the amendment of the gentleman from Clarke.

THE PRESIDENT—The gentleman from Lee has the floor.

MR. HARRISON—I thought I had, but was not sure.

MR. WADDELL—A parliamentary inquiry.

THE PRESIDENT—The gentleman will state the question of inquiry.

MR. WADDELL — Is not this whole matter out of order. Are we not just considering the matter of reconsidering the Section?

THE PRESIDENT—It has already been reconsidered.

MR. WADDELL—Can you go further until it comes up in regular order.

THE PRESIDENT—That point seems to be well taken. The question before the House was the question of reconsideration and when that was acted upon that disposed of the matter as to the report of the Committee until it was reached in regular order and it seems to the Chair the next order of business will be the call of the standing committees.

MR. ASHCRAFT—Has not the hour passed for that?

THE PRESIDENT—For the call of the delegates to introduce resolutions, etc., but not the call of the Committees to report.

MR. PETTUS—I rise to a point of order. Did I understand the Chair to hold that this matter is not up for consideration?

THE PRESIDENT—Yes.

MR. PETTUS—Then I would call the attention of the Chair to the fact that when a motion is made to reconsider at the morning session, it shall be taken up and acted upon at once.

THE PRESIDENT—And the motion to reconsider has been passed on. The motion prevailed but now the report is not up for consideration.

MR. HARRISON—I desire to have it understood that I have the floor when the report does come up for consideration.

THE PRESIDENT—The Chair will try to keep the gentleman in mind, and if he is on his feet before others, the Chair will try to see him.

MR. JONES (Hale)—I rise to move a reconsideration of the vote whereby Subdivision 22 of Section 1 of this article was adopt-

ed yesterday. It relates to the jurisdiction and fees of Justices of the Peace and constables. If the Convention reconsiders, I wish to substitute the word "increasing" in lieu of the word "regulating" which would make it read "increasing the jurisdiction and fees of Justices of the Peace or the fees of constables."

THE PRESIDENT—Did the gentleman vote for that?

MR. JONES (Hale)—Yes, for the special purpose.

MR. WATTS—Is it not too late to make a motion to reconsider?

THE PRESIDENT—It seems to the Chair not. The gentleman moves to reconsider the vote by which Subdivision 23 was adopted.

MR. OATES—As I understand the object as stated by the delegate for offering his amendment that is embraced in the subdivision the way it now stands. What is the change the gentleman proposes to make?

MR. JONES (Hale)—Insert the word "increasing" instead of the word "regulating."

MR. OATES—"Regulating" embraces everything.

MR. JONES (Hale)—You don't catch my idea. I want to leave the Black Belt counties free to decrease the fees but not to increase them.

MR. OATES—Regulating would allow the decreasing as well as increasing.

MR. JONES (Hale)—That is what I don't want. I want the Justices of the Peace of a particular county confined to a precinct, and to take away his criminal jurisdiction. This matter is a great burden and hardship on the planters of the Black Belt and also on the negroes. The way matters stand now no matter how obnoxious the system works in any particular county, we have to stand it, just because the white counties in the State have it. I can see no reason why if the people want to decrease jurisdiction or fees it should not be done. In cases where they have county courts to take charge of the matter I cannot see why it should be objected to that county regulating this matter as I suggest. And I think the matter ought to be settled here and you know that Justices of the Peace have friends here, and have still more in the Legislature, and if it is referred to the Commissioners' Courts they will be of the same calibre and it is well known wherever you tackle any office, you are up against it strictly.

MR. O'NEAL—I desire to say we have no objection to the amendment of the gentleman from Hale.

A vote being taken, the vote by which the Section was passed was reconsidered.

MR. COBB—I made a motion yesterday to reconsider Section 33. I want now to direct the attention of the Convention to this amendment. It relates to boundary lines.

THE PRESIDENT—Before that is taken up: The gentleman from Chambers made a point of order against the amendment offered by the gentleman from Clarke. The Chair has been unable to find a record of the vote to which the gentleman referred. The Chair will be obliged to the gentleman if he will look up the record.

MR. ROBINSON — The gentleman from Limestone (Mr. Pettus) offered the same amendment as the gentleman from Clarke.

THE PRESIDENT—The Chair will investigate the question and rule on the point of order when the question comes up again. The Chair will now recognize the delegate from Macon.

MR. COBB—I will ask the Clerk to read the amendment offered by the delegate from Cullman (Mr. Parker), which was adopted to Subdivision 33.

The amendment was read as follows: Amend Subdivision 33 by adding to the same the words "and changing the lines of old counties."

MR. COBB—My apprehension is that if that provision remains in the law the Legislature will be deprived of the power hereafter to change the boundary lines of old counties.

MR. PARKER (Cullman)—If the gentleman will read just ahead of that he will see that there is an exception so that the right remains to change the boundary lines of counties.

MR. COBB—I am afraid there would be some doubt on that point. If that amendment remains it seems to me it leaves the matter in doubt and it also seems to me that it is entirely unnecessary and that it should be stricken out. It is entirely unnecessary for the reason that when the report comes in from the Committee on County Boundaries you will have this subject entirely covered. Provision will be made and I have no doubt but that the provision will meet the sanction of this Convention regulating the mode and manner in and by which county boundary lines may be changed. The main feature of this is that before any change of that sort shall be made it shall be submitted to a vote of the people whose interests are affected, and that I think is right. It may be that I am supersensitive on this subject. It may be that this amendment will not have the operation which I think, but still out of abundant caution and because it is unnecessary

in this place I move to reconsider the section in order to strike the amendment out. Can I move to reconsider just the amendment or will I have to move to reconsider the vote by which the entire subdivision was adopted?

THE PRESIDENT—The gentleman will have to make the motion to reconsider the vote by which the subdivision was adopted.

MR. COBB—Then I will give notice of that motion and State that it is simply for the purpose of striking out the amendment of the delegate from Cullman which I think is wholly unnecessary.

MR. deGRAFFENREID—What is the subdivision as passed by the house (a good many of us don't know what it is.)

THE PRESIDENT—The clerk will read the subdivision as adopted.

MR. O'NEAL—The gentleman from Macon is laboring under a total misapprehension. Section 33 was amended yesterday to meet the objection he is now making. Mr. Parker of Cullman offered an amendment which was adopted and the section now reads: "Providing for the conduct of elections or designating places of voting, or changing the boundaries of wards, precincts or districts, except on the organization of new counties or changing the lines of old counties. That is the exception. They cannot pass anything as to that. That is the exception from the provision.

MR. COBB—I desire that nothing shall be passed by this Convention to prohibit the legislature from providing for a change in the boundary lines of counties.

MR. O'NEAL—That is exactly what has been done.

MR. COBB—Then I would be satisfied except for the point I make that it is wholly unnecessary here and will be provided for elsewhere, and I do not think it is wise to put the same provision in two places in the Constitution.

MR. deGRAFFENREID — I called for a reading and the Chair directed that it should be done but it was not done.

MR. JONES (Montgomery)—I rise to a point of order. The time is reached when the call of the committees is to be made and without a suspension of the rules this matter cannot be considered.

THE PRESIDENT—There is no fixed time for the call of the committees. The rule provides that half past ten the call of the roll of delegates for the introduction of ordinances, shall be suspended and the regular order of business will then be resumed except when it is interrupted by a motion to reconsider, which can be made immediately after the approval of the journal.

The Secretary will read the subdivision for the reading of which the gentleman asked.

The subdivision was read as follows: 33. Providing for the conduct of elections, or designating places of voting, or changing the boundaries of wards, precincts or districts, except on the organization of new counties, and changing the lines of old counties.

MR. OATES—I had charge of this part of the report when this amendment was adopted. I remember that when the amendment of the delegate from Cullman was offered I called the attention of the Convention to the fact that I had read the report made by the Committee on Counties and County Boundaries of which Committee, the delegate from Cullman is Chairman, in which I thought ample provision was made for this thing, but so far as I was concerned if he wishes it to be put in there we had no objection, but I called the attention of the Convention to the fact it had been substantially reported by his Committee although we had no objection to putting it in here.

THE PRESIDENT—The question is on the motion to reconsider the vote whereby subdivision 33 was adopted.

A vote being taken the motion to reconsider was lost.

THE PRESIDENT—The Clerk will call the roll of standing committees. The Clerk called until he had called the Committees on Rules.

MR. SMITH (Mobile) — The Committee on Rules reports favorably resolution 237 offered by Mr. deGraffenreid.

The resolution was read as follows: Resolved that after the present week this Convention shall dispense with all clerks of committees except the clerk of the Committee on Rules and the clerk of the Committee on Order, Harmony and Consistency of the Whole Constitution. Resolved, further, that the clerks of the Committee on Rules and Order, Harmony and Consistency of the Whole Constitution shall serve the Chairmen of the other committees when their services are required.

MR. PROCTOR—Mr. President, the gentleman—

THE PRESIDENT — The gentleman from Mobile has the floor.

MR. SMITH—I yield for the purpose of an amendment which the Committee had intended to make.

MR. PROCTOR—I desire to offer an amendment.

The amendment was read as follows: Add after the words "consistency and harmony of the whole Constitution" the words "and the journal clerk."

MR. PROCTOR—That is done by permission of the mover of the resolution and the Chairman of the Committee on Rules.

THE PRESIDENT—The question will be upon the amendment offered by the gentleman from Jackson to the resolution as reported by the Committee on Rules.

MR. HOWZE—I would like to inquire whether those two secretaries cannot perform the work for all three of the Committees. It seems to me we should get rid of all expense possible.

MR. PROCTOR—The character of work that is required for our Committee is different from that required for any other Committee. We have taken our clerk in hand and broken him in under our personal supervision and for that reason we would like to have him retained.

MR. JONES (Montgomery)—I would like to inquire why the Committee needs the clerk now? It may be there is a need, but I would like to be shown what is the need.

MR. SMITH (Mobile)—Matters are being referred to the Committee on Rules that we have to report on. We have some resolutions now.

MR. JONES (Montgomery)—How many are there now not acted on?

MR. SMITH (Mobile)—I think three.

MR. deGRAFFENREID—It is very probable that some of the Committee will need clerical work in the future. We cannot tell. It is a fact that the clerk to the Committee on Rules is a first class short hand writer and can do a great deal of work quickly. Some Committee may need some clerical work and we can send to them a first class shorthand writer. For that reason we desire to retain him on the Rules Committee. Then the Committee on Order, Harmony and Consistency will need a clerk.

MR. JONES (Montgomery)—How about the Committee on Journal?

MR. deGRAFFENREID—Mr. Proctor says they have a clerk who has been broken in and understands the work.

MR. JONES (Montgomery)—It is the duty of the Committee on Journal to look over the journal to see whether it is right and if they have a clerk to do it, we had as well dispense with the committee.

MR. HOWELL—If it is in order, I would like to introduce a substitute for the resolution and the pending amendment. I think we have other employes who, with equal propriety, might be dispensed with.

The substitute of the delegate from Cleburne was read as follows: Whereas, the session of the Convention is being protracted much longer than was anticipated and the expense of the same is already beyond what was expected, be it therefore, Resolved, That a special committee of five be appointed by the President to investigate and report at the earliest practicable day the advisability of reducing the number of employes of the Convention and cutting down the expenses of the same.

MR. deGRAFFENREID—I move that the substitute be laid on the table.

The motion to table was withdrawn.

MR. HOWELL—In my judgment, we made a mistake in the beginning in having more employes than were needed. We have ten pages at \$2 a day, and everybody knows five are amply sufficient. It occurs to me that the proper solution is to appoint a special committee to investigate and to see what employes can be dispensed with. If we are justified in squandering \$5 of the State's money, the same rule would apply to \$500 or \$5,000. I hope the Convention will not vote down this substitute.

MR. deGRAFFENREID—Now I renew my motion to lay on the table.

MR. HOWELL—On that I call for the ayes and noes.

The call was sustained.

MR. CUNNINGHAM—I rise to a point of order. The substitute of the delegate from Cleburne is not germane to the amendment of the gentleman from Jackson, inasmuch as it raises the appointment of a committee for the consideration of the subject, and, therefore, introduces entirely new matter, and is out of order.

THE PRESIDENT—The Secretary will read the resolution as reported by the committee and the substitute and the amendment offered by the gentleman from Jackson.

The resolution was read as follows:

“Resolved, That after the present week, this Convention shall dispense with all clerks of committees, except the clerk of the Committee on Rules and the clerk of the Committee on Order, Harmony and Consistency of the Whole Constitution and Journal.



"Resolved, further, That the clerks of the Committee on Rules, and Order, Harmony and Consistency of the Whole Constitution and Journal, shall serve the chairman of the other committees when their services are required."

The substitute of the delegate from Cleburne was read as follows:

"Whereas, The session of the Convention is being protracted much longer than was anticipated, and the expense of the same is already beyond what was expected, be it therefore

"Resolved, That a special committee of five be appointed by the President to investigate and report at the earliest practicable day the advisability of reducing the number of employes of the Convention and cutting down the expenses of the same."

MR. LOWE—May I ask for a reading of the amendment?

THE PRESIDENT—It has just been read.

MR. LOWE—I understood there was a resolution, an amendment to the resolution, and a substitute.

THE PRESIDENT—The amendment was added to the resolution, inserting "clerk to the Committee on Journal." The resolution reported by the Committee on Rules is to reduce the expenses of the Convention by dispensing with certain clerks to certain standing committees. The provision of the substitute is to raise the committee to investigate and report as to the propriety of dispensing with these clerks and with others. It seems to the chair that the substitute is germane, and the point of order of the gentleman from Jefferson is overruled.

MR. LOWE—The report of the Committee on Rules and resolution was what?

THE PRESIDENT — To dispense with all but the three clerks. The question is on the substitute of the delegate from Cleburne, and the yeas and nays demanded and the call sustained.

MR. deGRAFFENREID—The question is on the motion I made to table.

THE PRESIDENT—The chair stands corrected. The question is on the motion to table the substitute of the delegate from Cleburne.

The roll being called, resulted as follows:

AYES

Almon,  
Barefield,  
Bethune,

Brooks,  
Carmichael, of Colbert,  
Carmichael, of Coffee,

Carnathon,  
Cofer,  
Coleman, of Walker,

Craig,  
Cunningham,  
deGraffenreid,  
Eyster,  
Glover,  
Inge,  
Jones, of Bibb,  
Kirk,

Leigh,  
Long, of Butler,  
Lowe, of Jefferson,  
Lowe, of Lawrence,  
Macdonald,  
Parker (Cullman).  
Proctor,  
Reynolds (Chilton).

Reynolds, of Henry,  
Smith (Mobile).  
Spragins,  
Tayloe,  
Weatherly.  
Williams (Barbour).  
Wilson (Washington).

TOTAL—33

### NOES

Messrs. President,  
Ashcraft,  
Banks,  
Beddow,  
Blackwell,  
Boone,  
Burnett,  
Burns,  
Byars,  
Cardon,  
Case,  
Cobb,  
Davis, of Etowah,  
Dent,  
Duke,  
Eley,  
Espy,  
Ferguson,  
Fitts,  
Fletcher,  
Foshee,  
Foster,  
Freeman,  
Gilmore,  
Graham, of Montgomery,  
Graham, of Talladega,  
Grant,  
Grayson,  
Greer, of Calhoun,  
Greer, of Perry,  
Haley,

Handley,  
Harrison,  
Heflin, of Chambers.  
Heflin, of Randolph.  
Henderson,  
Hinson,  
Hodges,  
Hood,  
Howell,  
Howze,  
Jackson,  
Jones, of Hale,  
Jones, of Montgomery.  
Jones, of Wilcox.  
Kirkland,  
Kyle,  
Ledbetter,  
Long, of Walker,  
McMillan, of Baldwin,  
McMillan (Wilcox).  
Malone,  
Martin,  
Maxwell,  
Merrill,  
Miller (Marengo).  
Miller (Wilcox).  
Moody,  
Murphree.  
NeSmith.  
Norman.  
Norwood.

Oates,  
O'Neal (Lauderdale).  
O'Neill, of Jefferson.  
Opp.  
Parker (Elmore).  
Pearce,  
Pettus.  
Phillips.  
Pillans.  
Porter.  
Sanford.  
Sanders.  
Searcy.  
Selheimer.  
Sloan.  
Smith, Mac. A..  
Smith, Morgan M..  
Sorrell.  
Spears.  
Thompson.  
Vaughan.  
Waddell.  
Walker.  
Weakley.  
Watts.  
Whiteside.  
White.  
Williams (Marengo).  
Wilson (Clarke).  
Winn.

TOTAL—92

### ABSENT OR NOT VOTING

Altman,  
Bartlett,  
Beavers,  
Browne,

Chapman.  
Coleman, of Greene,  
Cornwall,  
Davis, of DeKalb.

Jenkins.  
King.  
Knight,  
Locklin,

Lomax,	Reese,	Sentell,
Morrisette,	Renfro,	Sollie,
Mulkey,	Robinson,	Stewart,
O'Rear,	Rogers (Lowndes),	Stoddard,
Palmer,	Rogers (Sumter),	Willet,
Pitts,	Samford,	Williams (Elmore).

So the House refused to table the substitute.

THE PRESIDENT—The question is on the adoption of the substitute of the delegate from Cleburne. All in favor say aye.

MR. COFER—I desire to ask unanimous consent to introduce a resolution.

A reading of the substitute was called for by Mr. Lowe and read.

THE PRESIDENT—All those opposed say no.

MR. LOWE—Before the Chairman announces the vote I desire to make the point of order that the statement should be made before the Convention for the ayes and noes both.

MR. HOWELL—I make the point of order that the vote has been taken and substitute adopted.

MR. LOWE—I should not like to call for a verification—

THE PRESIDENT—The gentleman from Jefferson possibly failed to hear the Chair when he submitted the question for the ayes and the vote on the ayes had been taken.

MR. LOWE—All I ask is for a verification of the vote.

THE PRESIDENT—Will the gentleman suspend until the Chair makes a statement? The Chair submitted a vote on the ayes and the gentleman called for a resolution and as an act of courtesy to the gentleman from Jefferson, the Chair directed the Clerk to read the resolution.

MR. LOWE—The gentleman from Jefferson considered it as a matter of right and he was demanding it before the question was put.

MR. BURNS—I rise to a point of order. The vote has been taken on the ayes and on the noes and the result has not been announced.

THE PRESIDENT—In the opinion of the Chair the ayes have it. The ayes have it and the substitute is adopted.

MR. LONG (Walker)—I would like to offer a resolution and have it referred to the proper committee. I wanted to offer it as an amendment on this matter, but it being disposed of my resolution will have to go to a committee.

THE PRESIDENT — The gentleman from Cullman asked unanimous consent to introduce a resolution but the Chair will first submit to the Convention is there objection. There is objection.

The gentleman from Walker asks unanimous leave to introduce a resolution. Is there object? There is objection.

MR. deGRAFFENREID—I move that the rules be suspended and the gentleman from Cullman and the gentleman from Walker be allowed to offer their resolutions.

THE PRESIDENT—The question would be on the report of the committee as amended. By unanimous consent that might be dispensed with.

MR. deGRAFFENREID — I understood the House had adopted the substitute and that the report of the Committee on Rules has been disposed of?

THE PRESIDENT—It has not been and the question will now be on the resolution as amended.

MR. O'NEAL—Is that open to amendment now?

MR. HEFLIN—I move that the substitute and the amendment be referred to the Committee on Rules. That committee can make the same investigation that a special committee could.

MR. GREER (Calhoun)—I make the point of order that the rules will have to be suspended before that can be done.

The point of order was overruled and a vote being taken the motion to refer was lost by a vote of 38 ayes to 72 noes.

A further vote being taken the resolution as amended was adopted.

MR. deGRAFFENREID—I now move that the rules be suspended in order that the gentleman from Cullman and from Walker may offer their resolutions.

MR. GREER (Calhoun)—I withdraw my objections.

MR. SANDERS—I object.

A vote being taken the motion to suspend was carried by 87 to 13.

The resolution No. 328 offered by Mr. Cofer was read as follows: Be it resolved that from and after the present week the services of five pages of the Convention be dispensed with and that the President be directed to discharge five of the pages now in attendance upon the Convention in order to save unnecessary expenses.

MR. COFER—I move a suspension of the rules and that that resolution be put upon its passage.

MR. LOWE—I second the motion.

MR. PETTUS—As a substitute I move that that resolution be referred to the special committee to be appointed by the President.

MR. HEFLIN (Chambers)—Would a motion to table be in order?

THE PRESIDENT—A motion to table a motion to suspend the rules would not be in order.

A vote being taken the House refused to suspend the rules to immediately consider this resolution to the special committee to be appointed.

The resolution of the delegate from Walker was read as follows:

Resolution No. 239, by Mr. Long of Walker:

Whereas, there is too much expense attached to the running of the Convention, therefore, be it resolved, that a committee of five be raised to say who are orators and who are not orators, and to allot to the orators a time during which each day they and one-half of the stenographers may repair to the Senate Chamber and there let the orators deliver themselves of their eloquence, and that the Convention proceed to work during such time.

THE PRESIDENT—That also will be referred to the Committee of five on economics.

MR. BETHUNE—I have a petition of a large number of citizens which I ask unanimous consent to present and have read.

THE PRESIDENT—The gentleman asks unanimous consent and the Chair hears no objection and the Clerk will read the petition.

The petition was read as follows:

Petition No. 19, introduced by Mr. D. S. Bethune.

To the Constitutional Convention:

We, the undersigned, do most respectfully petition your honorable body to pass an ordinance requiring the election of Railroad Commissioners by the people, and that they be given more power, and be paid by the State.

A. E. Singleton, Mayor; N. B. Powell, B. P. Powell, F. B. Haines, H. Well, R. J. Lawrence, T. J. Dean, W. S. Memfer, H. Harris, P. Q. Callam, R. L. Hobbs, H. P. Chappell, M. S. Stuckey,

W. J. Renfroe, C. C. Clark, Pat. F. Martin, G. A. Hunter, B. E. Grider, J. W. Ralsom, J. Y. Freman, T. R. Martin, C. P. West, H. M. Martin, J. E. Firt, R. W. Wise, M. Cohn, Albion Hixon, C. H. Franklin, T. H. Coleman, W. G. Wilson, J. B. Baumon, R. T. McGirty, T. B. Miles, N. H. Frazer, J. S. Sellers, U. T. Hightower, J. A. Hough, J. E. Griffith, J. G. Carmichael, F. B. Miles, T. C. Lester, H. L. Lee, A. M. Cope, J. H. Harrison, L. C. Ware, G. A. Hern, H. H. Hayes, W. H. Fuller, W. G. Lee, E. Troup Randle, Thos. H. Jones, J. T. Robertson, L. F. Travies, W. T. Hough, O. C. Moore, W. M. Stakely, H. C. Chappell, W. M. Crossly, F. J. Carlisle, W. C. Allison, W. W. Johnston, J. E. Foster, L. W. Redd, J. A. Lynch, W. Rosenstheil, H. J. Rosenstheil, J. F. Payne, P. B. Mitchell, W. A. Owen, J. A. Eidson, J. W. Pruett, R. A. Bishop, F. N. McMillan, W. W. Bates, E. F. McKinnon, J. D. Feagin, J. T. Flewellen, J. A. Pault, Henry Stierson, J. G. McAndrew, J. W. Crossly, Jr., R. E. L. Cope, Henry P. Blue & Co., J. H. Rainer, A. H. Keller, S. C. Gowan, R. J. Grady, J. H. Rainer, T. H. Gholston, A. D. Fielder, F. M. Mosely, C. E. Gholston, W. L. Mosely, J. H. Branscomb, J. K. Franklin, C. A. Hightower, J. W. Dykes, S. P. Rainer, W. W. Rainer, W. B. Cope, E. C. Dawson, T. U. Baskin, W. H. Wilson, J. A. Wyly, Jr., F. Anderson.

MR. SANDERS—I call for the regular order of business.

MR. MALONE—I have a short petition, which I ask unanimous consent to have read.

There being no objection, the petition was read as follows:

Dothan, Ala., July 5, 1901.

To Hons. M. Sollie, George H. Malone, T. M. Espy and H. J. Reynolds:

As our delegates, we respectfully petition the Constitutional Convention, through you, to provide in the new Constitution, for the election of the Alabama Railroad Commission by the people direct, and for the payment of their salaries by the State, and that their powers to enforce their rulings and orders be increased.

(Signed.)

J. M. Byrd, Geo. Cotton, G. W. Pilcher, W. W. Barnard, A. Payne, C. B. Farmer, W. C. Fenn, J. R. Young, A. B. Kelly, C. C. Hughes, J. J. Snell, A. J. Berverett, W. Y. Tate, B. F. Reid, R. F. Millikens, and many others.

Referred to Committee on Corporations.

MR. REESE — I have about thirty-five petitions which I would like to have read.

To which objection was unmistakably manifested.

MR. SANDERS—I call for the regular order of business.

THE PRESIDENT—The regular order will be the call of the roll of the standing committees.

Upon the call of the roll the Committee on Impeachments submitted the following report:

#### REPORT OF THE COMMITTEE ON IMPEACHMENTS

Mr. President:

The Committee on Impeachments instructs me to report the Ordinance hereto appended, to take place of Article VII of the present Constitution.

The material changes are as follows:

Section 1. The words "Lieutenant Governor, Commissioner of Agriculture and Industries" are inserted. "Habitual drunkenness" is omitted, and the following inserted in lieu thereof, "or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties."

Sec. 2. The word "sheriffs" is inserted.

Sec. 3. The word "sheriffs" is omitted: County Superintendents of Education and County Solicitors inserted. The impeachment of all officers of incorporated cities and towns is provided for.

Sec. 4. This is identical with Section 4 of the Article in the present Constitution. In this connection, the committee reports favorably Ordinance No. 404, offered by Mr. Coleman of Walker, providing for the amendment of that part of Section 25, Article V, adopted by this Convention, which is as follows:

"And the Governor, when satisfied after hearing the Sheriff, that he should be impeached, may suspend him from office until the impeachment proceedings are decided."

But two other ordinances have been referred to this committee, which have been duly considered, and the principles contained in the same incorporated in the Article, hence they are herewith returned to the Convention.

O. R. Hood, Chairman.

#### AN ORDINANCE

Be it ordained by the people of Alabama, in convention assembled, that Article VII of the Constitution be stricken out, and the following Article inserted in lieu thereof:

## ARTICLE —.

## Impeachments.

Section 1. The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Education, Commissioner of Agriculture and Industries and Judges of the Supreme Court, may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officers for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the Senate sitting at a court for that purpose, under oath or affirmation on Articles or other charges preferred by the House of Representatives.

Sec. 2. The Chancellors, Judges of the Circuit Court, Judges of the Probate Court, Sheriffs, Solicitors of the Circuits and Judges of the Inferior courts, from which an appeal may be taken directly to the Supreme Court, may be removed from office for any of the causes specified in the preceding section, by the Supreme Court, under such regulations as may be prescribed by law.

Sec. 3. The clerks of the Circuit, or courts of like jurisdiction, of Criminal Courts, Tax Collectors, Tax Assessors, County Treasurers, County Superintendents of Education, County Solicitors, Coroners, Justices of the Peace, Notaries Public, Constables and all other county officers, Mayors, Intendants, and all other officers of incorporated cities and towns in this State, may be removed from office for any of the causes specified in Section 1 of this Article, by the Circuit or other courts of like jurisdiction, or criminal court of the county in which such officers hold their office, under such regulations as may be prescribed by law. Provided, that the right of trial by jury and appeal in such cases be secured.

Sec. 4. The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, and disqualifications from holding office, under the authority of this State, for the term for which he was elected or appointed; but the accused shall be liable to indictment and punishment as prescribed by law.

## MINORITY REPORT.

Mr. President:

The undersigned, members of the Committee on Impeachments, do not concur in the report of the majority as to Sections 1, 2 and 3, and in lieu thereof, we recommend the following:



Section 1. The Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendent of Education, Commissioners of Agriculture and Industries, and Judges of the Supreme Court, may be removed from office for wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the Senate, sitting as a court for that purpose, under oath or affirmation, on Articles or charges preferred by the House of Representatives.

Sec. 2. The Chancellors, Judges of the Circuit Courts, Solicitors, and Judges of the Inferior Courts, from which an appeal may be taken directly to the Supreme Court, may be removed from office for any of the causes specified in the preceding section, by the Supreme Court, under such regulations as may be prescribed by law.

Sec. 3. The Sheriffs, Clerks of the Circuit or other courts of like jurisdiction, of criminal courts, Tax Collectors, Tax Assessors, County Treasurers, County Superintendents of Education, County Solicitors, Coroners, Justices of the Peace, Notaries Public, Constables and all other county officers, Mayors, Intendents of incorporated cities and towns in this State, may be removed from office for any of the causes specified in Section 1 of this Article, by the Circuit or other Courts of like jurisdiction, or Criminal Courts of the county in which said officers hold their office, under such regulations as may be prescribed by law; provided, that the right of trial by jury and appeal in such cases be secured.

We are aware that the change as made by the majority in Section 1 was done to try to remedy the defect as shown by the opinion of the Supreme Court in the Robinson cases. We are unable to see how the change remedies the difficulty, and, therefore, recommend the adoption of the section as found in the Constitution of 1875, with the addition of Lieutenant Governor and Commissioner of Agriculture and Industries.

As to Sections 2 and 3, the minority dissent from the action of the majority in transposing the word "Sheriffs" from Section 3 to Section 2, and the Section as recommended by the minority is the same as in your Constitution.

The effect of the adoption of the majority report will be to take the impeachment of the Sheriffs out of the hands of the local community which elected them, and place it in the Supreme Court, and it will be observed, that this is not limited to cases arising from negligence in allowing a prisoner to be lynched, but for any cause whatever, which we insist is not demanded by any condition that has ever existed in our State, or which is at all likely to ever occur, and therefore, we submit that the provisions of the Constitution of 1875 should not be changed.

J. F. Thompson,

J. J. Robinson.

MR. HOOD—I ask for the reading of the ordinance No. 404 accompanying the report.

The ordinance was read as follows:

Ordinance No. 404, by Mr. Coleman (Walker):

Whereas, ample provision is made by law for the impeachment of officers, and whereas, it is contrary to the policy of this government that any part of the powers of our department should be exercised by an officer of another department, and whereas, it is contrary to the spirit of our institutions that any person should be punished before trial.

Now, therefore, be it ordained by the people of Alabama in Convention assembled, That the following part of Section 28 of Article V, adopted by this Convention, be and the same is hereby annulled to wit: "And the Governor, when satisfied after hearing the Sheriff, that he should be impeached, may suspend him from office until the impeachment proceedings are decided."

MR. HOOD—I now move that the ordinance and report of the Committee be printed and lie upon the table and be considered in the order of its being reported.

The motion was carried.

THE PRESIDENT—The regular order will be the consideration of the report of the Committee on Local Legislation.

MR. DENT—I have an amendment to Section 4, which was under discussion when we adjourned, and I send it up.

MR. O'NEAL—I rise to make an inquiry. Do we take up where we stopped on yesterday, or do we take up the first motion to reconsider.

THE PRESIDENT—It seems to the Chair that when the Convention reconsiders the part that has been acted upon, we will properly go back. A part of subdivision twenty-six was transposed to the end of the section. That was withdrawn by the Committee, and added at the end of the Section, to which there were one or two amendments offered.

MR. WATTS—The Chair is a little in error. Mr. Jones of Hale, moved to reconsider subdivision 23, which was granted by the Convention, and it seems to me that we ought to dispose of his subdivision 23, before we go to 26.

THE PRESIDENT—The Chair did not intend to take it up in any other order, but the Chair was trying to correct a misap-

prehension in reference to subdivision 26. The Chair understands that that part of subdivision 26 was withdrawn, and added at the end of section 1. Is the Chair correct about that?

MR. O'NEAL—The Chair is correct.

THE PRESIDENT—The question will be on the adoption of amendment of subdivision 23.

MR. JONES (Hale)—I have a substitute, which has been accepted by the committee.

The substitute was read as follows: "Increasing the jurisdiction and fees of justices of the peace or the fees of constables."

MR. JONES (Hale)—I move the adoption of the amendment.

MR. WATTS—As an amendment to that, I move that Subdivision 23 be amended simply by striking out the words "jurisdiction or."

THE PRESIDENT—The gentleman will have to put his amendment in writing.

MR. O'NEAL—That will destroy the meaning of it.

MR. SANDERS—I call for the previous question on the substitute offered by the gentleman from Hale.

The main question was ordered, upon the substitute and the subdivision, and upon a further vote being taken, the substitute was adopted. Upon a further vote the subdivision as amended was adopted.

THE PRESIDENT—The question is on Subdivision 33.

MR. WATTS—The question now up is what the Convention persists in calling Section 26. It is the last part of Section 1.

MR. DENT—Is the section that was reconsidered now under consideration?

MR. O'NEAL—It commences after Subdivision 26 in the report—

MR. DENT—Beginning "no special law?"

THE PRESIDENT—To what purpose does the gentleman from Barbour rise?

MR. DENT—I rise for the purpose of making a motion. I want to preface it with some remarks, if this matter is up for consideration.

THE PRESIDENT—To what does the motion relate?

MR. DENT—It relates to this part of Section 33, I believe you call it.

THE PRESIDENT—The Convention did not reconsider Section 33.

MR. DENT—That part of Section 26 which was reconsidered beginning with the words "No special law," and ending with the word "general law."

THE PRESIDENT—There are some pending questions in reference to that, and the Chair will have to state them to the Convention. The gentleman from Limestone moved to amend the last paragraph. The Secretary will read the paragraph and pending amendments.

The subdivision was read.

THE PRESIDENT—There is a point of order made by the gentleman from Chambers, which will have to be ruled on.

MR. HARRISON—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman will state the question of inquiry.

MR. HARRISON—The amendment was offered, immediately after the motion to reconsider. Soon after I took the floor, and the question was raised that it was all out of order, and I had to yield the floor under that ruling and I submit that if it was all out of order these amendments are not properly before the Convention.

MR. WILSON (Clarke)—A point of order. The Convention received the amendments.

THE PRESIDENT—It seems to the Chair that the point of order is well taken, that the amendments were not in order at the time.

MR. SANDERS—I now offer the amendment I offered.

MR. WILSON (Clarke)—I offer the amendment to the amendment offered by the gentleman from Limestone.

MR. HARRISON—I rise to a point of order. The delegate from Barbour had the floor, and was in reality not out of order on the proposition on which the Chair now changes its ruling, and he is entitled to the floor and not the gentlemen offering the amendments.

MR. DENT—If I had the floor I would like to hold it, if I am entitled to it. Will the Chair bear with me a moment. I took my seat in order that the Chair might decide the point of order raised as I believed by the gentleman from Chambers, and for that

purpose only, as I understood it, and I have not heard any ruling from the Chair upon the point of order.

THE PRESIDENT—The point of order related to these amendments, against which a point of order was made that they were not offered at the proper time.

MR. DENT—Then they are not before the Convention.

THE PRESIDENT—They were not properly before the Convention, but after the Chair ruled on that point of order, there was no gentleman who had the floor, thereupon the gentleman from Limestone rose, and he was recognized for the purpose of offering his amendment, and thereupon the gentleman from Clarke arose, and gained recognition for the purpose of offering his amendment to the amendment. The Chair will recognize the gentleman from Barbour to present any motion which he thinks will facilitate the Convention.

MR. DENT—I move to table the whole matter, the pending subdivision and all the amendments.

MR. ESPY—Wasn't that same proposition voted on by this Convention on yesterday, and voted down?

THE PRESIDENT—No, the proposition in its present shape was not voted down, because the amendment offered by the gentleman from Limestone was not then considered in its present connection.

MR. O'NEAL—I will ask for a division of the question.

THE PRESIDENT—The Chair will state that the point of order made now by the gentleman from Henry involves to some extent the same point of order made by the gentleman from Chambers, although the question is in a little different shape. One authority says "an amendment may be in any of the following forms, to add or insert certain words or paragraphs, to strike out certain words or paragraphs, and if this fails, it does not preclude any other amendments, than the identical one rejected. To strike out certain words and insert others, which motion is indivisible, if lost, does not preclude another motion to strike out the same words and insert different ones, or to substitute another resolution or paragraph on the same subject for the one pending."

Another authority says "where two propositions have been voted upon separately, an amendment embodying the two presents a different question." The two propositions were considered separately and the two propositions are both combined in the present and it is a different question and therefore the Chair will overrule the point of order.

MR. O'NEAL—I call for a division of the question, and I call for an aye and no vote upon the question.

The call for the ayes and noes was not sustained.

MR. SANDERS—I move that this Convention remain in session for five minutes, until this pending question is disposed of.

Upon a vote being taken the Convention refused to suspend the rules.

The chairman of the Democratic caucus made a statement to the Convention, and the Convention adjourned.

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### AFTERNOON SESSION

The Convention was called to order by the President, and upon a roll call it showed that there were 119 delegates present.

Indefinite leave of absence was granted to Mr. Spear of St. Clair, on account of sickness.

THE PRESIDENT—When the Convention adjourned, we had under consideration the report of the Committee on Local Legislation.

MR. REESE—In the proceedings of this Convention of day before yesterday, there was an omission in part of the proceedings. The gentleman from Macon, in addressing an interrogatory to the Chairman of the Committee at the conclusion of it said, "Now, bold Saxon, hold thine own." It does not appear in the proceedings.

MR. COBB—I deny the soft impeachment.

MR. HEFLIN (Randolph)—I desire to ask unanimous consent to make a report from the Committee on Schedule, Printing and Incidental Expenses.

Objection was made.

THE PRESIDENT—The question is on the consideration of the report of the Committee on Local Legislation. The Convention had under consideration the last paragraph of that report. There was pending an amendment to amend a motion by the gentleman from Barbour to lay on the table.

MR. DENT—I desire to withdraw the motion to table.

There being no objection, the motion was withdrawn.

MR. WATTS—I move to table the amendment of the gentleman from Clarke.

MR. PRESIDENT—The Chair recognized the gentleman from Montgomery (Mr. Jones.)

MR. O'NEAL—We withdraw that motion.

MR. WATTS—I beg pardon, I understood the Chair to recognize me.

MR. JONES—If it were not that this matter is fraught with so much vital import to the whole work of the Convention concerning local legislation, I should be content to simply vote. I beg the gentlemen who are opposing this provision to remember that under the old law, the uncertainty, which was spoken of, grew out of the language in the Constitution when it said there should not be any local law in a case which can be provided for by a general law.

MR. PETTUS—Was not the pending question when the House adjourned the motion of the gentleman from Barbour to table the entire Section?

THE PRESIDENT—That has been withdrawn.

MR. JONES—Mr. President, I was proceeding to say that the language of the present amendment takes away, in a large measure, the uncertainty and deplorable circumstances to which the gentlemen refer arising under a ruling that the courts could judge under the present Section of the Constitution. It might take a very wise man in fact to say, under the present Constitution, what can be provided for by general legislation. Most anything could be provided for by general legislation if skilled ingenuity were employed. It might require numerous statutes and they might be very voluminous in detail, but still you could not say a thing could not be provided for by general legislation. Now the Committee has provided that it is not the things that can be provided for by general legislation, but things that are. So that all a man has to do is to look at the statute and he can determine with reasonable certainty, because nothing is absolutely certain in a law when it is a question of construction.

Another objection has been urged that this is something new, that it is putting the courts to invade the legislative province. I want to ask my friends here who have made that objection if there is really anything in it? Isn't the Legislature bound in any event when the matter comes before it, to determine whether it is constitutional or not? Certainly it is. It is one of the greatest co-ordinate departments of the Government and the courts attach so much importance to its judgment in a matter of that sort that they say when the Legislature has acted and thereby determined that it has a power or that a certain act is constitutional, that the courts will not interfere unless clearly convinced that the Legislature is in error. There is nothing new then in saying that the courts and not the Legislature shall be the final judge in this matter. It is no invasion of the province of the Legislature. It is simply our old ancient way of doing, and one of the glories of a written Constitution, is that there is always some tribunal that

has the power to determine in a case of last resort, whether a Constitution has been violated or not. You make an exception to the spirit of our institution when you say that it is an invasion of the province of the Legislature to say that the courts shall be the final arbiters to determine whether the Constitution has been violated or not.

MR. CUNNINGHAM—Will the gentleman permit a question?

MR. JONES—Yes, sir.

MR. CUNNINGHAM—Are not the courts the final arbiters without this provision of the Constitution?

MR. JONES—No sir; because our Supreme Court has said that the language put down there may be purely a matter of legislative discretion with which the courts will not interfere. Just for instance, the Constitution says, a bill shall be read at length three several days. The courts cannot inquire into that. They cannot supervise it if the Legislature says in its journal that it has been read three several days. That is the language of it.

MR. CUNNINGHAM—The question whether an act is local or general in its nature would not be passed upon by the courts unless there is a special provision requiring them to do so.

MR. JONES—Under the decision of *Jack et als. vs. DeVinney*, and several other cases, I think not and this is the reason we make this appeal to our friends who do not seem to really take in the full scope of this section. The gentleman from Greene, who was a Judge of the Supreme Court, thinks it would. I for one do not. But there are some other able lawyers on this floor, and the gentleman from Greene is one of them, who are of the opinion that if those things are stricken out, especially in view of a decision of the Supreme Court on a like provision of the Constitution, it may mean the death knell to the whole section. It may be, but, mind you, I don't say that is my opinion, because it is not but there are other gentlemen whose opinion I refer to, think that it may sound the death knell of this whole Article on Local Legislation if we put in here language which the Supreme Court says means that the Legislature alone should not have any voice in it. It seems to me that we ought to proceed with great caution.

MR. SMITH (Mobile)—I want to ask the gentleman from Montgomery if the argument he is making is in accord with his opinion.

MR. JONES—The gentleman did not hear me. I said day before yesterday, and I said a moment ago, that was not my personal opinion.

MR. SMITH—I did not hear you say that.



MR. JONES—But take the gentleman from Greene, who has long been an honored Judge on the bench; he thinks differently, and we may be in the attitude of the eminent Francis S. Lyon, a man of eminent intellect and fine, broad, common sense, and in the Convention of 1875, they thought they had provided against the evils with which we had struggled for a quarter of a century in that Constitution and they congratulated the people of Alabama that they had delivered them from these evils; but it was not five years before a case came up that knocked down the whole provision and made it as so much waste paper.

MR. MACDONALD—May I ask the gentleman a question? Suppose a local law should provide a certain method by which rights might be obtained and a person should follow such methods and obtain rights; suppose the courts should afterwards decide that a general law existed under which such rights might have been obtained by different methods, what position would such person be in?

MR. JONES—He would be in the fix of any other man who acted on an unconstitutional law.

MR. MACDONALD—Suppose the law was apparently constitutional?

MR. JONES—Every law is apparently constitutional.

MR. MACDONALD—Would a man be helped by the general law?

MR. JONES—I don't think he would, because he would be getting his rights under a void statute in violation of the Constitution.

MR. MACDONALD—Void, not voidable.

MR. JONES—No, sir; any law declared void is as though it had never been enacted. That is the language of the decision.

Now, there is another thing which I hope our friend will bear in mind, there cannot be very much of this legislation. It is not one time in a thousand that any title would depend upon some local act that is passed. There are always hard cases in which an innocent man is hurt by law, but if we once get our people out of the rut of favoritism in local legislative matters, that can be attended to by general legislation, the good that will result will more than compensate for the hardship in any particular case. There is not a case where a legislator is compelled to draw a law that he does not stop to think and have to consider, does this thing violate the Bill of Rights? Sometimes questions come up whether the statute infringes upon the right of life, or liberty in the pursuit of happiness. You have not to take the risk. If you go into a battle, you may be shot. You must do the best you can. There is

no provision in our government by which you can get in advance a decision of the Supreme Court as to whether a law is constitutional or unconstitutional until some like case has come into court and been declared constitutional or unconstitutional.

MR. WALKER—This matter has been discussed before the Convention a good deal, and by reason of some interests being developed on the one side or the other, it seems to me that the Convention has to a great extent lost sight of the meaning of a very simple provision that is before it and have interpreted it as going out further than the provision can possibly be interpreted when you examine the language. Now, what is the proposed provision about which all this discussion is taking place? It is simply this: That no special, private or local law except a law fixing the time for holding courts shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this State. Now, gentlemen of the Convention, don't you all agree that if a man already has under the general law a thing which he wants or if under a general law already existing, he can get the relief he desires by going to the court, don't you think under those circumstances he ought not to be allowed to go to the Legislature? And, as a special privilege, or benefit to him get something that is not open to the remainder of the people? Is there any hardship in that? If a general law already gives the right, why in the world should the Legislature be bothered with giving that right over again? If, under the general law already existing, the relief that is desired can be obtained in the courts which are open to all men, ought one man as a favor to be conferred upon him by the member from his county to get that relief when everybody else who cannot get these favors must go before the courts and get it in the way the general law prescribes? Now, gentlemen, don't all the members of this Convention concede that the applications to the Legislature for things of that kind that have already been provided for fully and completely under laws already in existence should not consume uselessly the time of the Legislature. If the thing is already provided for by a general law, or if the relief desired can readily be obtained by going into the courts of the country, what necessity can any one say exists for the passage of a special or local law under those circumstances? I conceive none in the world. Now, what has been the practice? The practice has been that with reference to matters as to which we have ample and complete general laws, application has been made to the Legislature time and time again to get relief as a matter of special favor simply to relieve persons in that situation from going into the courts and proceeding to secure the remedies they desire in the mode that other people have to pursue in order to secure that kind of relief. It is a kind of special favoritism that I do not believe any gentleman in this Convention, when he stops to consider the matter, is in favor of continuing or

perpetuating. Well, now, the Constitution of 1875 passed a provision and congratulated itself upon the fact that it had put in the fundamental law a provision of this kind of favoritism. Read the address that was made by some of the able men in that Convention in which they congratulated the people of Alabama that by this provision on that subject they had stopped that kind of favoritism by special acts of the Legislature and had put the citizens of the State generally upon the same footing. But how were their expectations disappoint and defeated? By the circumstance that under the provision which that Convention made and congratulated itself upon, it turned out that the provision was faulty because the determination of the question as to whether or not the relief could be obtained under the law as it existed or under general legislation was left entirely with the Legislature and that the courts could not determine it. Now is there any hardship saying to any man, any individual, corporation or association that if the laws of the State have already provided for your case and you can get everything you could possibly get by appealing to the legislature, you ought not to consume the public time in trying to get the legislature to do what has already been done for you. That is all this provision means.

MR. BETHUNE—Suppose the legislature, after this Constitution has been made and adopted by the people, suppose the legislature meets and passes a general law forbidding the organizing or establishing of any more dispensaries in this State and a town or city desires one, how would the town or city obtain one if that section is adopted?

MR. WALKER—I really don't understand the purport of the question.

MR. BETHUNE—Suppose the legislature, after this Constitutional Convention adjourns and the Constitution is submitted to the people and adopted, meets and passes a general law forbidding the organizing or establishing of any more dispensaries in this State, and suppose a town or a city desires to establish one, how would such city or town obtain one if this section were adopted.

MR. WALKER—That would be just the reverse of the situation. In that case there would be no general law under which the relief could be obtained and this is not a prohibition upon a town or city in that kind of a case. It prohibits local or special laws only in the classes of cases in which the relief desired could not be obtained. That is the kind of cases.

MR. ROBINSON—I ask the gentleman suppose the legislature were to pass a general law allowing a county to issue bonds for the purpose of building a court house and prescribe the rate of interest at 6 per cent and the county could not float its bonds

at 6 per cent but could only float them at 1 per cent and the legislature were to pass a special law allowing them to issue bonds just as in a general law and provide a rate of 7 per cent, how would the courts decide that question?

MR. WALKER—I am not able to say, but that would not be governed by the provisions contained in this section. This section prohibits a special law only in cases already provided for by a general law.

MR. ROBINSON—Suppose there is a general law providing for the issuance of bonds to build a court house and providing the rate of interest of 6 per cent and this county cannot float the bonds at 6 percent, could they pass a special law for the issuance of bonds at 7 per cent. would that be held to be in conflict with the general law?

MR. WALKER—I am not able to answer your question.

MR. ROBINSON—Wouldn't it be better to leave that matter of whether that could be provided for by a general law to the legislature and not for the court because one is acting at the time they pass the law and the other is called on to act afterwards when substantial rights of individuals are affected by it?

MR. WALKER—I think not. The only question is, all these cases imply that one body or another should be required to answer this question, either the legislature or the court. You cannot in fairness say after the experience we have already had that leaving the provision as it is under the Constitution of 1875, the legislature will really ask itself the question. Nobody will pretend to say that in reference to these matters of local and special legislation that have been adopted in Alabama that the legislature has ever paused for a moment to inquire whether those cases are such as could be provided for by general law.

MR. MALONE—Section 3 which has already been adopted makes provision for the repeal of any local law. Now, if some adverse legislature were to repeal for instance the laws on the dispensary question, which were passed for the purpose of meeting the wants of a certain locality, could they ever get it back except under general laws?

MR. WALKER—It could readily be provided for under general laws by which a community could get their own desires in that regard.

MR. MALONE—When you are out you can't get back any more?

MR. WALKER—Not under the local law. The fears of the gentlemen who have the dispensaries in their minds throughout the discussion of the matter have made the gentleman lose sight of

the purport of the provision. I think it is obviated by the provision that that matter should be excluded and that it should be left the subject of local and special legislation. I thought everybody was satisfied that it was disposed of in that way.

MR. WATTS—I move to table the amendment offered by the delegate from Clarke.

The motion was withdrawn at the request of the delegate from Lee.

MR. HARRISON—I dislike to discuss any question that has been already discussed so extensively. I was perfectly willing when the motion was made to lay on the table, but that motion was withdrawn and argument in favor of this subdivision has been gone into quite extensively. I have listened attentively and have tried to ascertain the views of the Convention and after listening to those views I see no use whatever for this subdivision as reported by the Committee. I agree with the distinguished gentleman from Madison that so far as the part of the section read by him there can be no opportunity for harm in it; but I cannot see any use of it. To the other part which the motion of the delegate from Clarke seeks to strike out, I do see great objection. I appreciate all that has been said about the effect of the ruling of the Supreme Court on that subdivision as it practically stood in the old Constitution, but when these two Committees with great diligence have not only included everything they could think of, but have examined every Constitution in the land and have given us positive inhibitions against thirty-five classes of special and local legislation, I cannot see any need for this blanket clause.

MR. WALKER—If the gentleman will permit me a question, I am satisfied you and I are after the same object. We want to stop local and special legislation.

MR. HARRISON—I do.

MR. WALKER—In reference to matters already provided for by general law or in reference to relief that can already be obtained from a court. Now that is the object sought for here and if you can advise a method to secure it, I shall be glad to support the proposition.

MR. HARRISON—I think these two committees have devised the best plan known to anybody and that is to make a fair positive, clear provision and name the subjects upon which they cannot pass local and special legislation.

MR. O'NEAL—Will the gentleman allow me to interrupt him?

MR. HARRISON—I will, but my time is very limited.

MR. O'NEAL—I will move to extend your time.

MR. HARRISON—It may not be granted.

THE PRESIDENT—The chair is not looking favorably this afternoon on motions to extend time.

MR. O'NEAL—The General Assembly shall pass general laws for the cases enumerated in this subdivision. Do you want to strike that out?

MR. HARRISON—No, I would leave that there. I think the English would be better to leave that and strike out the other, but I don't see how that applies to the question we are discussing.

MR. O'NEAL—Well, let me call your attention to this provision, "Nor shall the General Assembly enact any such special, private or local law by the partial repeal of a general law." What objection have you to that?

MR. HARRISON—I have no objection to that, but you have crowded so much in there that I object to that I would be willing to lose the good things in it to get rid of all the rest, and I don't see how that last mandate can be carried out.

As I understand it, this is largely a copy of the present Constitution, only that the one we are living under now leaves it to the courts and not the Legislature to determine as to this matter, and with that out, I do not see that any harm would be done, but I see no good in this section when the whole field have been covered by special prohibitions eliminating from legislative action the subjects named, and my distinguished friend from Montgomery, although he quoted the delegate from Greene as expressing a doubt, I doubt whether the delegate from Greene can entertain that doubt after carefully reading this, and I was pleased that the delegate from Montgomery himself had no doubt about it, for he answered the delegate from Mobile that he did not so contrive it. Now, there is no lawyer on this floor who will contend that this subdivision will have any effect whatever with these thirty-five subdivisions in there.

MR. ROBINSON—May I ask the gentleman a question? Is there anything in these thirty-five subdivisions to prevent holding all-day singing?

MR. HARRISON—No, sir; nor prayer meetings, either.

MR. ROBINSON—Is there anything to prevent foot log crossings?

MR. HARRISON—No, sir.

MR. ROBINSON—Is there anything to prevent throwing rocks out of the road?

MR. HARRISON—No, sir.

MR. ROBINSON—There have been special laws passed on all those subjects by the Legislature.

MR. HARRISON—Then I suppose the things that brought about the passage of such laws were happening in Chambers and not in Lee.

Now, I call the attention of the Convention to the fact that the gentleman from Madison could not answer the question propounded by the gentleman from Chambers, and that is a sufficient reason for stating that it could not be answered and that is reason, if nothing else, why this clause should be stricken out.

MR. ROBINSON—I would ask, then, that it be left to the Legislature to decide it.

MR. HARRISON—I don't think we should adopt this. I have entertained a view that seem to have actuated the committees. I have always favored carrying into effect the provisions of the old Constitution, and if there was no other way, I perhaps would vote for this one, but I doubt the propriety of allowing this matter to go into the hands of the court, because I really believe if this provision is adopted it will tend to produce more litigation than any matter that has been before this Convention. The effect of this would be that one-half of the local laws passed on any subject would go into the hands of the court. It would be a fine harvest for my profession, but as a member of this Convention, and as a legislator, I would feel that I was neglecting my duty if I did not raise my voice against this. It will be a question on one side or the other of every measure as to whether it has been provided for by general legislation, and I think it would be better to risk the Legislature to determine the matter under the positive mandates here than to be inter-weaving the different duties that the several departments of our government should perform. This will not only create confusion, but will cover the State with litigation. I would be loath to support this matter anyhow, but when the committees have, after examining all the constitutions, and when we have, as one of the committees informed me last night, one more of these sections than any State in the Union, positively prohibiting the Legislature, who do you want to go further? Therefore, conformable to the request of the gentleman, I renew his motion to table the substitute, and to table the whole thing.

MR. O'NEAL—I ask for a division of that.

MR. HEFLIN (Randolph)—The other day, when I was making the first speech I have made during the Convention, and my time expired, some gentleman was kind enough to move that my time be extended, and the gentleman from Lee suggested that I have leave to print. Being loath to believe that the gentleman

intended any unkind cut, and, being desirous to some extent of showing the milk of human kindness, and out of great respect for the age and ability of the distinguished gentleman from Lee, I move that his time be extended.

MR. HARRISON—I thank my friend from Randolph and the Convention, but I have been in favor of short speeches and the saving of the public time, and I beg respectfully to decline further time; but I also wish to say to my friend that I am sorry if he took any offense at my remarks, which were not intended in any such light, but he did have such a pretty speech, and I thought thoroughly prepared, that I wanted to read it in writing.

MR. WATTS—I call for the ayes and noes.

MR. REESE—Has a Convention a right, when a motion is made to table a section and all amendments with a view of getting rid of the entire subject, to call for a division on the various amendments?

THE PRESIDENT—In answer to the inquiry, the chair will state that it is perfectly competent for the Convention to table a section and all amendments, but as a matter of right, delegates can demand a division. The rule laid down by Cushing is that the motion to table will apply to the propositions in their regular order. A division under our rules is a matter of right, and when a delegate demands a division of a motion to table a section and pending amendments, the motion will be taken on each proposition successively. The question is on the motion of the delegate from Clarke, and the ayes and noes have been demanded by the delegate from Montgomery (Mr. Watts). Is the call sustained?

The call was not sustained.

A vote being taken, the amendment of the delegate from Clarke was tabled.

A further vote being taken, the House refused to table the amendment of the delegate from Limestone.

THE PRESIDENT—The question is now on the motion to table the Section.

MR. WATTS—Don't we pass on this amendment before we pass on any further. The Convention has refused to table this amendment. Now don't we take up this amendment and dispose of it?

THE PRESIDENT—The motion to table has been made and it is the duty of the Chair to submit the motions to table in successive order.

MR. ASHCRAFT — Notwithstanding we have refused to table this amendment, are we still called upon to say whether we will table the original proposition without the amendment?



THE PRESIDENT—That is the proposition. The Convention don't have to table this proposition. That is for the Convention, not the Chair, to say.

MR. ASHCRAFT—One more question. Suppose the original proposition is tabled, what do we do with this amendment which we have refused to table?

THE PRESIDENT—That is for the Convention to say.

MR. O'NEAL—If the Convention refuses to table the original Section the question recurs on the adoption of the amendment?

THE PRESIDENT—Certainly. The Chair will state that the peculiar condition that will be produced as suggested by the gentleman from Lauderdale might be a reason why the Convention should decline to table this proposition, but it is not a reason why they have not the right to amendment. In many cases amendments are tacked on to a proposition to kill it but the Convention, if it desires, can fasten on to a proposition any amendment.

A vote being taken on a division, by 50 ayes and 75 noes the House refused to table the Section.

MR. O'NEAL—I now move the adoption of the amendment of the delegate from Limestone and on that I move the previous question and also move the previous question on the Section, but if the gentleman desires to offer an amendment, I will withdraw it.

MR. ROBINSON—I have an amendment I would like to offer.

MR. O'NEAL—Then I withdraw the motion for the previous question as to the Section.

A vote being taken the main question was ordered on the amendment of the delegate from Limestone, and a further vote being taken the amendment was adopted.

MR. ROBINSON—I offer an amendment.

The amendment of the delegate from Chambers was read as follows:

Amend by striking out after the word State in the thirty-fifth line down to and including the word "court" in the thirty-seventh line, and insert, "Unless every such special, private or local law shall contain a recital that notice has been given as provided by Section 2 of this Article and that the matter of such special, private or local law cannot be provided for by general law, and that the relief sought therein cannot be given by any court."

MR. O'NEAL—I rise to a point of order. The Convention has already refused to strike out that very part.

MR. ROBINSON—This is not a motion to strike out simply, it is a motion to strike out and insert.

MR. O'NEAL—The gentleman from Clarke moved to strike out this same language.

MR. ROBINSON—But I move to strike out and insert.

MR. O'NEAL—If a gentleman moved to strike out a certain part of a Section and the Convention votes it down, can some other gentleman then move to strike out that same part and insert something else? If he can, it seems to me there would be no end.

THE PRESIDENT—It seems to the Chair that the present amendment is in order. The proposition is somewhat changed.

MR. ROBINSON — I shall detain the Convention only a minute to explain that provision. It is simply to strike out the power of the court to pass on this question, which, under this Section as it stands, may be done next week or two years or twenty years, and allow the Legislature to put in the recitals of the bill and determine then and there which must be carried into the act itself, and also that the act must contain the statement that the notice has been given and that the matter is not provided for by general law and that the relief sought cannot be obtained from any court. That is a simple matter. It allows the same tribunal that is enacting the law to determine the question whether the notice is given and whether the relief sought can be obtained under any general law or through any court. This amendment provides that the General Assembly when it passes any law must put into that law itself and thereby determine the question that notice has been given, that the relief cannot be obtained under a general law, or through any court. That is all there is in my amendment. This matter ought to be determined by some tribunal at the time the bill is passed, and not let it go on for years until valuable rights have been acquired under it before the matter is determined. I cited an instance to the distinguished gentleman from Madison where the court would hold that the law I mentioned to him was provided by general law because there would be no evidence to show why 7 per cent. interest was carried into it instead of 6 per cent. already provided by the general law. People ought to be protected in that. Suppose a Court House were burned and under a general law they could not float bonds at 6 per cent. and a special law is passed and the bonds sold and the Court House built and then a year or two afterwards some tax payer comes up before the court and says this law is unconstitutional. We have the Court House and we won't pay the bonds.

There have been a number of instances of that kind and it does seem to me that right in the legislative act is the place for this question to be determined, and when they carry it into the law they are bound by it and there can be no chance for them to say, we did not understand this question.

MR. JONES (Montgomery) — My distinguished friend from Chambers has brought the same man back here only in a different uniform, and I move the previous question on the Section and the amendment.

MR. REESE—I will ask the gentleman to let me offer an amendment which does not relate to this amendment.

The motion for the previous question was withdrawn temporarily, and the amendment by the gentleman from Dallas was read as follows:

Amend last paragraph of Section 1 by striking out the word "fixing" in line 33 and insert in lieu thereof the words "regulating the creation, practice, or."

MR. JONES — I now move the previous question on the amendment.

On a vote the main question was ordered.

MR. WILSON (Clarke) — Is that an amendment to the amendment proposed by the gentleman from Chambers?

THE PRESIDENT—It is. The gentleman from Chambers offers an amendment to the paragraph as reported by the committee and the gentleman from Dallas offers an amendment to that amendment.

MR. PROCTOR—It seems to me the amendment offered by the gentleman from Dallas is to insert in the original section and the gentleman from Chambers desires to strike out the very part the gentleman from Dallas desires to amend.

MR. ROBINSON—The amendment of the delegate from Dallas is not in the words I strike out.

MR. REESE — I ask unanimous consent to withdraw my amendment and ask leave to put it in afterwards.

The consent was given.

Mr. Long of Walker called for the yeas and nays on the amendment of the delegate from Chambers and the call was not sustained and a vote being taken the amendment of the delegate from Chambers was lost.

MR. LONG (Walker)—I would like to be recorded in favor of the delegate from Chambers.

THE PRESIDENT — The official stenographer will be instructed to report the gentleman's attitude.

MR. REESE—I now offer my amendment.

The amendment was read as follows: Amend last paragraph of Section 1 by striking out the word "fixing" in line 33 and insert in lieu thereof the words "regulating the creation, practice or."

MR. ROBINSON—Has not the previous question been ordered?

THE PRESIDENT—The previous question was ordered on the amendment only.

MR. SAMFORD—Then I move the previous question upon the paragraph and all amendments.

A vote being taken the main question was ordered, and a further vote being taken the amendment of the delegate from Dallas was adopted, and a further vote being taken the paragraph as amended was adopted by a vote of 73 ayes and 27 noes on division.

MR. O'NEAL—Now I move the adoption of the entire section as amended and upon that I call for the previous question.

A vote being taken the main question was ordered and a further vote being taken the section was adopted.

MR. deGRAFFENREID—I rise for the purpose of saying that I voted for that section with a view and for the purpose of tomorrow morning moving a reconsideration and I give notice that I will make that motion to reconsider tomorrow.

MR. WATTS—I make the point of order that the gentleman did not vote for the adoption of the section in which it was included.

MR. deGRAFFENREID — I voted for both and for that special privilege.

MR. JENKINS—I rise to a question of inquiry. Rule 49 says "on the final adoption of a section the vote shall be taken by yeas and nays."

THE PRESIDENT — The same question was raised some time since and the ruling of the Chair was that the word "section" following "article" in that rule meant the same thing as article. It was taken from some rule where the Constitution was divided in sections instead of articles. It was not intended that there should be a yea and nay vote on the adoption of every paragraph of every article.

THE PRESIDENT—The question is now on Section 4.

MR. PROCTOR—I have an amendment to offer.

MR. DENT—I also.

THE PRESIDENT—The Secretary will read the section and the pending amendment.

Section 4 was read as follows:

Sec. 4. The operation of no general law shall be suspended for the benefit of any individual, corporation, association, town, city, county or township, nor shall any individual, corporation, association, town, city, county or township be exempted from the operation of any general law.

The amendment of the delegate from Limestone (Mr. Sanders) was read as follows: Amend Section 4 by adding thereto, "Providing that nothing in this section or article shall affect the right of the Legislature to enact local laws regulating or prohibiting the liquor traffic.

MR. O'NEAL—That has been adopted.

MR. SANDERS—I ask unanimous consent to withdraw that amendment as the identical amendment has been adopted in the previous section.

Objection was made.

The amendment offered by Mr. Dent was read as follows: Amend Section 4 of the article on Local Legislation as follows: Strike out the following words "town, city, county or township" as those words appear in lines 2 and 3 and also add the word "provided" before the word "corporation" in the same line and also to further add the word "or" before the word association in the same line.

MR. WATTS—I offer a substitute for Section 4.

MR. DENT—I had the floor and I want to say a word or two on my amendment.

THE PRESIDENT—The gentleman's amendments does not seem to be germane to the amendment of the delegate from Limestone and it might be better to withdraw the amendment until the Convention votes on the other amendment.

MR. DENT—With the understanding that I shall then have the privilege of renewing it, I have no objection.

The Convention assented and the amendment was withdrawn.

MR. O'NEAL—I would like to amend by adding "except as otherwise provided."

THE PRESIDENT—The gentleman will send up his amendment.

MR. ASHCRAFT—I have that same amendment already reduced in writing.

The amendment was read as follows: "Amend by adding 'except as in this article otherwise provided'."

A vote being taken the amendment was adopted.

THE PRESIDENT—The question is now on the amendment offered by the delegate from Limestone.

MR. WATTS — We have already adopted this identical amendment and I move to lay it on the table.

A vote being taken the Convention by 45 ayes to 51 noes refused to table the amendment and a further vote being taken the amendment of the delegate from Limestone as amended by the amendment of the gentleman from Lauderdale was adopted.

MR. WATTS—I move that each one of the subdivisions have that provision tacked on to it.

MR. ASHCRAFT—I am sure if the delegate from Montgomery understood this amendment he could not possibly object to it.

MR. DENT—I now desire to re-offer my amendment to the section as it now stands.

The amendment which has shortly before been withdrawn by the delegate was again read.

MR. DENT—I just desire to say a word or two to the Convention. This same question was passed upon by the Convention when we adopted subdivision 9 of Section 1 of this Article and to add the amendment offered by myself would make it harmonious with this section and besides leave it just the same as the provision in the Constitution of 1875 in reference to not granting special favors to individuals, corporations or associations. I hope the amendment will be adopted.

MR. WADDELL—I move to lay the amendment of the delegate from Barbour on the table.

A vote being taken the motion to table was lost.

A viva voce vote was then taken on the amendment and a call for division made by the delegate from Walker, Mr. Long.

MR. HEFLIN—I will withdraw the call for the division.

THE PRESIDENT—Is the gentleman from Chambers representing the delegate from Walker? (Laughter.)

The vote on the division was taken and resulted 59 ayes and 32 noes, and the amendment was adopted.

MR. LONG (Walker)—I have an amendment.

MR. FITTS—This section with the amendments amount to nothing and I move to lay the section and all amendments on the table.

THE PRESIDENT—The Chair had recognized the gentleman from Wilcox.

MR. JENKINS—I ask the clerk to read my amendment.

The amendment was read as follows: Amend Section 4 by striking out all of said section after "corporation" in the third line and inserting the word "or" before the word "corporation" in the third line.

The amendment was read as follows: Amend Section 4 by providing that the legislature shall never have the power to issue a call for another Constitutional Convention.

MR. JENKINS—I decline to accept that amendment.

Under this provision I maintain it is impossible to amend the general law as it goes through the legislature so as to exclude any county from its operation and I believe if the people of any county are overwhelmingly opposed to that law they ought to have the power to exclude that county from its operation.

MR. DENT — I think the amendment which was adopted struck out the word county and it does not apply to counties now.

MR. JENKINS—Not only counties but strike out towns and cities too.

MR. DENT—That has already been stricken.

MR. JENKINS—Then I am in favor of the section and will withdraw my amendment.

MR. SANDERS—I have a substitute which I believe will be acceptable to all and which I believe will clear up this muddle.

THE PRESIDENT—The clerk will read the amendment of the delegate from Limestone.

The amendment was read as follows: No bill introduced as a general law into either house of the General Assembly shall be so amended as to except from its provision any individual association, corporation, municipality, county or township.

MR. deGRAFFENREID—I move to lay that on the table.

A vote being taken the amendment was tabled.

MR. CARMICHAEL — I move to lay the section and all amendments on the table.

MR. O'NEAL—I hope the gentleman will allow me to call attention to one provision of law before that is done.

THE PRESIDENT—Does the gentleman withdraw the motion to table.

MR. CARMICHAEL—Yes.

MR. O'NEAL—The provision as amended is the same provision found in the present code. That has a wise purpose. I call attention to a veto by Governor Samford of a bill during the last legislature when a bill was passed to the effect that all liquor consumed by the members of a club should not be regarded as sold. It was held that that would be regarded as a violation of this section. There was also a veto by our distinguished friend from Montgomery when he was Governor, where a bill was passed providing that card-playing in a certain club should not be considered as card-playing in a public place. The veto was on the ground that that was a violation of this section. So this section has a broad purpose.

MR. BOONE—I ask the gentleman to read Section 23 as it now is in the Constitution.

MR. O'NEAL—I haven't it before me. Will the gentleman please read it?

Section 23 was read as follows:

23. No special or local law shall be enacted for the benefit of individuals or corporations in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the General Assembly for the benefit of any individual, corporation or association.

MR. O'NEAL—Certainly, and on that very question the Supreme Court says in the case of *ex parte City Council of Montgomery in re Knox*:

The cities of Mobile, Montgomery and Selma are excepted from the operation of the section of the code which forbids cities, towns or counties, to tax business occupations, etc. Code of 1876, Sec. 499. The exception is not violative of the last clause of the 23rd section of the fourth article of the Constitution, which inhibits the General Assembly from suspending any general law, "for the benefit of any individual, corporation or association." We do not incline to the opinion, that any other than private corporations are within the operation of this provision. But, without expressing any opinion upon that point, we cannot suppose that it



was intended to limit the power of the General Assembly, when enacting general laws, to except from their operation persons or things which would be otherwise included. If so, the exceptions in the statute of limitations, in favor of the insane, or of infants, or of married women, would be violative of the Constitution. It is the suspension, the temporary stopping of existing laws, for the benefit of individuals or corporations, the Constitution forbids, and not the power of the General Assembly when enacting general laws, to determine whether they may be, or may not be, persons or subjects which ought to be excepted from their operation.

Now certainly no delegate in this Convention wishes to repeal such a provision as this.

Nobody wishes the Legislature to suspend the operation of a law that is in existence for the benefit of a corporation, and unless you insert this provision, you allow the General Assembly to suspend the statutes on the books for the benefit of individuals and corporations in this State, and hence I hope the Convention will vote down the motion to strike this section from the Article.

MR. PARKER (Cullman)—I move the previous question.

THE PRESIDENT—The question recurs upon the adoption of the section as amended.

MR. REESE—I call for the reading of the section.

MR. HEFLIN (Chambers)—I move to lay the section on the table.

MR. O'NEAL—And on that I demand the ayes and noes.

The call for the ayes and noes was then withdrawn.

MR. DENT—It seems to me that we have already adopted this section as amended. While we were in the act of taking a vote, the gentleman from Colbert moved to table it, which was not heard by the chair.

MR. O'NEAL—He withdrew it at my request, to allow me to make some remarks on the subject.

MR. WATTS—I would like to have it read, because I think it is so absolutely foolish with those amendments in it, that I want the Convention to hear it.

The clerk read as follows: "The operation of no general law shall be suspended for the benefit of any individual, corporation, association, nor shall any individual, private corporation, association, town, city, county or—

MR. REESE—I would like to be informed what are the words in the section before the house.

THE PRESIDENT—Two secretaries are endeavoring to accommodate the gentleman, if he will be patient.

The clerk continued to read: "The operation of no general law shall be suspended for the benefit of any individual, private corporation, or association, be exempted from the operation of any general law—

MR. O'NEAL—That is not right. There is no sense in that.

MR. WATTS—That is what I told you.

MR. DENT—That is not the amendment.

THE PRESIDENT—Will the gentleman from Barbour step forward and read it to the Convention?

MR. DENT—I will read it from where I stand: "The operation of no general law shall be suspended for the benefit of any individual, private corporation or association, nor shall any individual, private corporation be exempted from the operation of any general law."

The clerk continued reading: "Provided that nothing in this section or Article shall affect the right of the Legislature to enact local laws regulating or prohibiting the liquor traffic." Amend by adding, "except as in this Article otherwise provided."

MR. DENT—That was stricken out.

THE PRESIDENT—The chair understands it was insisted upon.

MR. O'NEAL—Yes sir; as an amendment.

MR. ASHCRAFT—The substitute was adopted in lieu of the amendment of the gentleman from Limestone. I tried to explain it to the chair at the time, but the chair declined to recognize me for the purpose. I knew that the gentleman from Montgomery did not understand it at the time.

MR. O'NEAL—You offered it as a substitute.

MR. ASHCRAFT—Yes, sir.

MR. REESE—I move that the section be recommitted.

To which there were expressions of dissent.

THE PRESIDENT—The previous question has been ordered upon the section as amended.

MR. O'NEAL—I ask it to be read as really adopted. The gentleman from Lauderdale moved a substitute for the amendment of the gentleman from Limestone, and this substitute was adopted, and no one can question that fact. Then it reads with-

out all that liquor business being repeated time and again. We don't want to show we are wild on one subject. To put it in once is sufficient.

**THE CHAIR**—The gentleman from Limestone, Mr. Sanders, offered the following amendment to Section 4: "Provided, that nothing in this section or Article shall affect the right of the Legislature to enact local laws regulating or prohibiting the liquor traffic." Thereupon the gentleman from Lauderdale moved to amend. It is not offered as a substitute, but as—

**MR. ASHCRAFT** (Lauderdale)—I beg the chair's pardon, but I offered it as a substitute.

**THE PRESIDENT**—The paper speaks for itself; it says "amend by adding except as in this Article otherwise provided." This applies directly to the amendment of the gentleman from Limestone, which the Convention refused unanimous consent to withdraw.

**MR. ASHCRAFT**—But, Mr. President, if I offered it by inadvertance to amend, and so wrote it there, yet it was offered as a substitute, and so understood by the Convention, and adopted as a substitute.

**A VOICE**—I understood it was an amendment to the amendment.

**THE PRESIDENT**—It was so understood by the chair and so it reads.

**MR. O'NEAL**—There was a misunderstanding on the subject, and the only way to reach it is to vote over.

To which there were expressions of dissent.

**MR. O'NEAL**—I move that unanimous consent be given to withdraw both, and then put it in shape.

**MR. HEFLIN** (Chambers)—I will ask the gentleman a question. Is that the amendment that I offered that the committee accepted.

**MR. O'NEAL**—That has already been incorporated in the other section.

**MR. HEFLIN**—That is the same section.

**MR. O'NEAL**—That was incorporated in Section 1. The amendment you offered applies to the whole Article, and then the two amendments apply to the whole Article in the same language. That makes us ridiculous. I do not think that the Convention wants to make this section ridiculous.

MR. SAMFORD—I move that the rules be suspended for the purpose of reconsidering the amendment and the substitute.

THE PRESIDENT—The gentleman from Pike moves a reconsideration of the vote whereby the previous question was ordered and the several amendments adopted.

MR. REESE—I make the point of order that the previous question has been ordered, and that the rules of this Convention require amendments shall be in writing, and that they show for themselves; that it is within the province of the chair to inform this Convention of what amendments they have adopted, and the motion to reconsider at this time, or a motion to suspend the rules will not be in order, and even a motion to adjourn is not in order.

MR. SAMFORD (Pike)—My understanding of the same rule is that a motion to suspend the rules of this Convention is always in order.

A DELEGATE—No, sir.

MR. SAMFORD—And especially at this time.

THE PRESIDENT—The chair will examine the question and rule on it.

MR. HEFLIN (Chambers)—I want to make the point of order that the amendment I offered this morning, the committee came to me and wanted me to offer it, and it is the same, it is the identical amendment that we passed on this morning that they now ask to withdraw. In the very same words.

MR. O'NEAL—We adopted it this morning.

MR. HEFLIN (Chambers)—But you ask unanimous consent to take it out.

MR. O'NEAL—That is why I ask the unanimous consent to withdraw it.

THE PRESIDENT—In the opinion of the Chair the Convention can suspend the rules, and that a suspension of the rules will be necessary to reconsider the vote whereby the previous question was ordered. The gentleman from Pike moves that the rules be suspended.

MR. SAMFORD (Pike)—I now move a reconsideration of the vote whereby the amendment of the gentleman from Limestone, Mr. Sanders, was adopted.

THE PRESIDENT—It will be necessary, the Chair would suggest, that the House reconsider the vote whereby the previous question was ordered.

MR. SAMFORD (Pike)—I move to reconsider the vote by which the previous question was ordered.

And upon a vote being taken the motion was carried.

MR. SAMFORD—Now I move a reconsideration of the vote by which the amendment of the gentleman from Limestone, Mr. Sanders, as amended by the gentleman from Lauderdale, Mr. Ashcraft, was passed.

THE PRESIDENT—In the opinion of the Chair the Convention would have first to reconsider the vote whereby the amendment of the gentleman from Lauderdale was passed upon the amendment of the gentleman from Limestone.

MR. SAMFORD—I make that motion, then, Mr. President.

And upon a vote being taken the motion was carried.

MR. SAMFORD (Pike) — I move a reconsideration of the vote whereby the amendment of the gentleman from Limestone was passed.

And upon a vote being taken the motion was carried.

MR. SAMFORD (Pike)—Now, Mr. President, I move to lay the amendment of the gentleman from Limestone upon the table.

THE PRESIDENT—There is pending the amendment offered by the gentleman from Lauderdale to that amendment.

MR. SAMFORD (Pike)—As I understand it is competent for any member to make a motion under the rules of this Convention, to lay an amendment or substitute, or both, as he chooses, on the table, and leave the other before the House.

THE PRESIDENT—The pending question will be upon the amendment of the gentleman from Lauderdale to the amendment of the gentleman from Limestone, and you cannot get over the amendment by him unless it is withdrawn or disposed of.

MR. SAMFORD (Pike)—I will ask him to withdraw that temporarily by unanimous consent.

MR. ASHCRAFT—I consent to its withdrawal.

To which objection was made.

MR. SAMFORD—I move that the gentleman be permitted to withdraw his amendment.

The motion was carried.

MR. SAMFORD (Pike)—I now move to lay the amendment offered by the gentleman from Limestone, Mr. Sanders, on the table.

Upon a vote being taken the motion to table prevailed.

MR. SAMFORD—Now I re-offer the amendment of the gentleman from Lauderdale, Mr. Ashcraft, and I move the previous question upon the section and the amendment.

A reading was called for, and it was read as follows: Amend by adding "except as in this Article otherwise provided."

Upon a vote being taken the main question was ordered, upon a further vote the amendment being adopted, and a vote was taken and the section as amended was adopted.

The Clerk read Section 5 as follows:

"The General Assembly may by general law confer upon courts of County Commissioners, Boards of Revenue or other courts, such power of local legislation and administration, touching all matters and things not provided for by general law, and not inconsistent with the provisions of this Constitution as the General Assembly may from time to time deem expedient."

MR. VAUGHN—I have an amendment.

THE PRESIDENT—The Convention is considering the report of the Committee on Local Legislation and in that connection is considering such parts of the report of the Legislative Department as bear on the same question.

MR. OATES—The latter part of the report of the Committee on Legislative Department as will be seen, states it will move the substitute—

THE PRESIDENT—The Secretary will read the proposed substitute.

It was read as follows: Your committee do not concur in Section 5 of said article as reported by the Committee on Local Legislation, and reports as a substitute therefor Section 25 of Article IV of the present Constitution.

THE PRESIDENT—Does the gentleman from Dallas offer his amendment.

MR. VAUGHN—I desire to offer a substitute to the report of the Committee on Legislative Department.

MR. O'NEAL—If the gentleman will yield to me, to make a statement, I desire to say that the Committee on Local Legislation have reported Section 7, which is the section in the Constitution to which the gentleman from Montgomery refers. We reported it as Section 7, but it is not printed. We had unanimous leave to take it up when this article was under consideration.

MR. OATES—I have not seen that.

THE PRESIDENT—It is out of order to discuss the substitute offered by the gentleman from Montgomery until the substitute offered by the gentleman from Dallas is read. That is the pending question.

The substitute was read as follows:

Amend by striking out Section 5, adding in lieu thereof the following: The General Assembly shall pass general laws under which local and private interests shall be provided for, and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized and their acts of incorporation altered and all such laws shall be subject to repeal or amendment.

MR. VAUGHN—That substitute is a copy of a section of the Constitution of Mississippi, which just precedes the exclusion from the legislature of subjects about the same as in the present article, and under that section of the Constitution of Mississippi, the legislature can pass laws whereby towns may enact their local laws. They have operated under it for a number of years and from the statement of the gentleman from Clarke, they have done it successfully, and I offer that as a substitute.

MR. PETTUS—I want to say that this time I am heartily in accord with the section reported by the Committee. I think it is an admirable section, and it is taken from the Constitution of the State of New York. In the Constitution of New York, Article 3, Section 27, occurs this provision: "The legislature shall, by general law, confer upon the Boards of Supervisors of the several counties of the States such further powers of local legislation and administration as the legislature may, from time to time deem expedient." Under this, there are some decisions cited. One was that an act to vest in the Board of Supervisors certain legislative powers for the protection of shell fish is constitutional. Another case cited, is that a law providing for the compensation of certain county treasurers shall be fixed by the supervisors, is valid. Now, the substitute that is offered by the gentleman from Dallas makes it the duty of the legislature to provide by general laws for local interests, but in what manner, and what kind of a general law can the legislature provide for local interests of this character unless it can delegate its power of legislation to some body.

MR. FOSTER—Did you notice the difference between the New York provision and this?

MR. PETTUS—There is no material difference.

MR. FOSTER—This provides the legislature shall confer upon such courts power of local legislation touching all matters and things not provided for by general law. It seems to me to be

much broader power than is conferred by the New York Constitution.

MR. PETTUS—It is a question, Mr. President, that is left in the discretion of the General Assembly of this State, and whenever the General Assembly passes a general law, under this section, it denudes itself of that much power and authority. It is not that the General Assembly shall pass these laws, but they may, in their discretion, pass such laws, and I take it that the General Assembly is not going to divest itself of any power of local legislation, or any other power, by its own act, except where the best interests of the people demand it. Now another section exists in the Constitution of New York. They have provided for game laws. They have authorized and delegated by way of local legislation to the Boards of Supervisors in the respective counties, this matter of game laws. That was something specifically left out of the prohibition as to which local legislation was cut off, because they did not believe that that power could be delegated to the boards of commissioners in the different counties.

MR. VAUGHN—Under the substitute offered by myself, the legislature would not have the authority to delegate that court, or any other body in the county, the authority to enact these local laws.

MR. PETTUS—I think it is a doubtful proposition. I do not think it is near so plain as it is in the section as reported originally by the Committee. Now the proposition which we are confronted with is that we have adopted in the report of the Committee on Local Legislation, and put an absolute inhibition upon the General Assembly of this State, so far as some thirty-five or seven matters of legislation are concerned. We have by constitutional prohibition absolutely cut off the power of the General Assembly to pass local acts upon these different subjects. Now after you have done that, there has got to be some source of relief. There has got to be provided some forum to which the people can turn for relief and legislation on these subjects, and if you cut it off entirely and do not authorize the legislature to delegate this power to some other body in the different counties, or somewhere else, you have left the thing up in the air. The General Assembly is the forum of the people, and if it is wise to cut off this legislation from the General Assembly, then it is the duty of the Constitutional Convention to provide some other body, and some other forum, where relief can be obtained; where legislation can be had upon stock laws, school districts, and things of that character, a place to my mind most convenient, and nearest to the people. A forum that is open nearly all of the time is the commissioners court. It is the one body in this State which is most nearly analogous to the Boards of Supervisors in the State of New York. It is a body, to which the humblest citizen of any county may go and



petition. Any poor person may go before it with his petition or his grievance. The humblest citizen in Limestone county can get on his mule or horse, and ride over to the county seat, and present his petition, and have his side of the case heard. As it is down here in the legislature, it is only the people who have the means to come before the General Assembly to petition in local matters, and bring their influence to bear in a lobby, upon the legislature, to secure the passage of bills of this character. I think, Mr. President, that the Convention, upon consideration and investigation will realize the fact that after they have prohibited the legislature from legislating upon these questions, they must turn to some forum, and provide some channel through which it can be obtained, and I think that the experience of the State of New York, and the conditions in the State of Alabama, make the commissioners courts and the boards of revenue in the different counties, the proper and the best and the most suitable forum to authorize such legislation. Delegate this power to the courts of county commissioners and I am heartily in favor of this provision.

MR. PILLANS—I desire to ask the gentleman a question for information. How long has that been in operation in the State of New York?

MR. PETTUS—It is in the printed Constitution that I have in my hands. It was in the Constitution, and amended by the Constitutional Convention of 1894. I do not know just what time this provision was put into the Constitution of New York. In this section it says this was former section 23 of this Article, and was changed to section 27 by the Convention of 1894 and ratified November 6, 1894. It was added by the people November 3rd, 1874, and was in force on January 1st, 1875. It has been in operation for nearly a quarter of a century.

MR. PILLANS—It came in in '75?

MR. PETTUS—Yes, sir.

MR. PILLANS—I would ask the gentleman also whether there is any similarity between the conditions of the County Courts of the great Empire State of the Union, and those of Alabama, in the diffusion of learning or anything of that sort?

MR. PETTUS—Yes, sir, there is a marked similarity. I am not familiar with the diffusion of learning in New York, but I am familiar with the similarity in this respect, that local legislation is necessary in the counties of New York to meet the conditions there and that local legislation is necessary in the counties of Alabama to meet local conditions existing there, and I take it that the people of Alabama are as competent to govern themselves in their different counties and localities as the people of New York, or of any other State.

MR. OATES—There is a vast difference in the condition of the people of this State and those of New York. In New York it may be a very good thing, and quite satisfactory, to delegate to the County Commissioners powers of legislation, but in Alabama I think that it is a very dangerous experiment, and one that would not be satisfactory to the people. Now what is the main question here? The delegate from Limestone has shown that the provision reported by the committee is substantially the New York provision. The delegate from Dallas dissents and makes a minority report, and his proposition enumerates several cases, and undertakes to point out the manner by which the General Assembly shall pass general laws.

The Chair will suggest to the distinguished gentleman from Montgomery that the proposition of the gentleman from Dallas is not offered as a minority report. It is offered as a substitute, and the gentleman from Dallas is not a member of the committee making the report.

MR. OATES—I was not aware of it, and I thank the Chair for making the correction. But I will speak to the proposition, and on the principle that inclusion of certain things is an exclusion of others, it makes it very dangerous. There are some gentlemen who have said, and many delegates have claimed, that there are about thirty-five or thirty-six prohibitions which have been adopted. They are mistaken about that. There are thirty, or thirty-one is the last one to be considered as such. The last was, however, more of a regulation of the manner in which legislation should be effected, but considering and counting it as one, there are but thirty-one, because several have been voted down. My count of it leaves thirty-one. But the amendment offered by the delegate from Dallas does not apply nor provide for the cases presented by these. Not at all. Then construing it as statutes are frequently construed, it may be found to be defective, and too restricted in its provisions. Now, sir, the Section found in the present Constitution has an application to this case, which I think if the gentleman will look at the amendment he will find that it fits exactly, and is just what ought to be provided in the Constitution. The language is the "Legislature shall pass general laws under which local and private interests shall be provided for and protected." Does not that give the Legislature as much power as anything that could be said, and it does not undertake to point out, except the general direction, and authorization, and it is an injunction upon the Legislature that they shall pass laws which shall provide for these private interests and under which they shall be protected.

MR. PETTUS—I would like to ask the gentleman a question. If his remark a while ago about the different conditions in this State, had reference to the ability of the different commis-

sioners' Courts, does not he think that the additional responsibility would raise the standard of the men in those Commissioners' Courts?

MR. OATES—That is an untried experiment.

MR. PETTUS—Another question. Under Section 25 of Article IV, in the old Constitution, the Legislature could pass a general law to give the people of Swamcut Beat in Limestone County, an anti-stock law?

MR. OATES—Now any legislator who will address himself to the work and who is at all learned in the law, will find not much difficulty in framing general laws under which nearly every one of these things, and in fact all of them, can be readily performed, and to commit it to the County Commissioners, why sir, while we have in a good many counties very able men on the Boards of Revenue and County Commissioners, we have in other places and at other times, some men who are not very capable. I know in a county not a great ways from Montgomery where a man served as County Commissioner for many years, and could not write his name. While he was a man of good judgment on matters which were presented to him, and could pass fair judgment on them, but illiterate men, in a sparsely settled country, are not very capable of handling these various questions. My opinion is that if you commit it to them, you will have more litigation and trouble, as there will be a greater contrariety of opinion and greater differences, under what is supposed to be the general law in the different counties. Why it will be worse than local legislation now. Why, sir, a safer and better plan is to authorize the Legislature, as the amendment which I offered does, in a simple way, and make it the duty of the Legislature to pass these laws. Now the amendment offered by the delegate from Dallas, my recollection is, from the reading of it, the General Assembly may do it. I think it is better to employ the word "shall" though in a statute where the public are interested, the word "may" is considered as meaning "shall." But it is better to use the word, which is intended to be employed, the Legislature shall pass general laws, under which local and private interests shall be provided for and abrogated. That language is simple and plain, and it occurred to me that it was decidedly the best. It was better than any speculative language. It cannot be misconstrued, but it gives all the authority to the Legislature that you can give under anything, and it is better a long ways than when you undertake to give a supposedly larger jurisdiction by a specification of what they may do. It is stated in so many words here, and it is to be presumed that the Legislature, and especially the Judiciary Committee of the two houses, which would have this work to do, putting it in that plain and unmistakable language, would carry out the provision, and if you risk the Legislature, as I think you certainly can, you cannot employ more proper and plainer language.

MR. O'NEAL—I ask the Clerk to read the amendment offered by the gentleman from Dallas.

MR. VAUGHN—I desire to withdraw the amendment. I did not know at the time that there was a minority report, and that Section 25 and Article IV. of the present Constitution is practically the same as my amendment, and I will withdraw my substitute.

THE PRESIDENT—The Chair does not understand that there is a minority report. The Chair will explain that the proposition offered is by the Legislative Committee, which is being considered in connection with the report of the Committee on Local Legislation, and while it is not a minority report, it subserves the same purpose. It is offered as a substitute.

MR. VAUGHN—That being the case, I ask consent to withdraw my substitute.

There being no objection, the substitute was withdrawn.

MR. O'NEAL—The reasons that actuated the committee in suggesting this section, was a doubt as to whether the Legislature, in the absence of a constitutional provision, could vest legislative powers in the Commissioners' Courts, or any other court of like jurisdiction. Now, the gentleman from Montgomery says that Section 25 of the present Constitution covers the same purpose. We have offered as an amendment to our report Section 25 of the Constitution of 1875 as Section 7. This section provides that the General Assembly shall pass general laws under which local and private interests shall be provided for and protected. That does not confer upon any other tribunal legislative power. Now, it is the general principle of the law, which the delegates in this Convention will recognize, that the Legislature cannot vest in any other tribunal its legislative powers. It cannot delegate its legislative powers. On this subject, Mr. Cooley, in his work on Constitutional Limitations, says: "One of the settled maxims in constitutional law is that power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it remains, and by constitutional agency alone laws must be made to remain until the Constitution itself is changed. The power to whose judgment, wisdom and patriotism this high prerogative has been entrusted, cannot relieve itself of the responsibility by choosing agencies upon which the power shall be devolved. Nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone, the people have seen fit to confide this sovereign trust."

Now we are not wedded to the Commissioners' Court, or any other court. All that we desire is to confer upon the Legislature

power to delegate certain legislative authority to another tribunal, that in their wisdom may be necessary to be created in that county.

MR. OATES—I would like to ask, as I suppose if the Convention authorizes this delegation of powers, it would stand, but it is a dangerous thing, and I am doubtful whether they can do it or not. I will ask the delegate from Lauderdale if he and a dozen more able lawyers, could take up this Constitution and frame general laws by which all of these things could be provided for before the Courts of County Commissioners alone? Some things are proper to be referred to them. Some other things to be provided for might be done by other courts. Could you not frame general laws under which everything could be accomplished?

MR. O'NEAL—I agree with the gentleman from Montgomery that the Legislature could frame laws under which almost everything can be provided for. Now, the section which has already been adopted, expressly requires the Legislature to provide general laws to embrace all the subjects as to which they are prohibited from enacting special laws. They are required by the mandate of this article, which has been adopted, to pass general laws on all these enumerated subjects, and they are required to pass general laws on all other subjects, but we can see no impropriety for the Legislature to vest in the Commissioners' Courts power to change a man's name, power to change the names of a corporation; powers, if necessary, to relieve the disabilities of non-age, or the power to locate stock districts.

MR. OATES—I want to ask the delegate if the law does not now vest the Probate Judge, for instance, with the power of doing several of those things?

MR. O'NEAL—we do not say the Commissioners' Court in the section, but Commissioners' Courts, Boards of Revenue, or other courts. They could vest it, then, under this, in the Probate Court, in the Circuit Court or in any other court. We simply wanted to put a provision in here that in all these small matters of detail in the county, if it was ascertained that a general law could not sufficiently provide for it, then the Legislature should give this power to some court in the county, to exercise legislative jurisdiction.

The hour of 6 o'clock having arrived, the Convention adjourned.

**FORTY-THIRD DAY**

MONTGOMERY, ALA.,

Friday, July 12, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and the proceedings opened with prayer by the Rev. Mr. Dix, as follows:

Our Heavenly Father, still the recipients of Thy mercy, we come before Thee with thanksgiving. Still conscious that we have not loved Thee, our Lord and God, with all our hearts, and with all our souls, and with all our minds, and all our strength, and that we have not loved our neighbor as ourself, we come before Thee with confession. Seeking forgiveness and still conscious of our weakness, and of our need of help, we come to Thee with supplication and petition. We pray that Thy blessing may to-day rest upon this Convention. We pray that they may be enabled to comprehend the deep significance of their work, and may they have that wide view of their relations to that work which becomes not only those who act for a sovereign State, but those who act for a State standing in relation to sister States, under the administration of a government of their own establishment. We pray that all these relations may enter into account, and that this body of men may be enabled to frame an instrument which shall embody the principles of civil and religious liberty, of government administered by States. We pray, our Father, in behalf of the personal interests of these men. May they and their families be blessed of Thee. May they be enabled to discharge their duties to their fellow men, under an approving conscience, and with wisdom of Thine own dictation, but may they also understand that whatever may be the blessings of Thy providence bestowed upon a common country, and upon a beloved State, and upon communities and persons, the crowning excellence of divine blessing is eternal life through Jesus Christ, our Lord. Confer this blessing, we pray Thee upon us, Thy servants, and bless them according to the measure of Thy love, we ask through Jesus Christ, our Redeemer. Amen.

Upon the call of the roll 120 delegates responded to their names.

Mr. Eyster here took the chair.

Leaves of absence were granted as follows: Mr. Tayloe for today; Mr. Kirkland for today and Saturday; Mr. Reynolds of Henry for today and tomorrow; Mr. Bethune for today; Mr. Kyle for Friday, Saturday, Monday and Tuesday; Mr. Burnett for today, tomorrow; Mr. Foshee for today and tomorrow; Mr. Searcy of Tuscaloosa for today and tomorrow; Assistant Door-keeper Fain for tomorrow; Mr. Sollie for tomorrow; Mr. Williams (El-

more) for tomorrow; Mr. Craig for Monday; indefinite leave for Mr. Duke (Chambers) and Mr. Wilson (Clarke) on account of sickness.

MR. MALONE — On yesterday I introduced a petition and had it referred. While it was a short one, it had quite a number of signatures to it. Mr. McGauley hunted me up in the evening and said he had looked for me in the morning to ask leave to print that petition with only one name, and as he could not find me he had already taken the liberty to do so. I insisted upon him putting several more names to it. I find now that the petition is not confined to my particular place, and that quite a number of names from adjoining localities will be left out, and I now ask that inasmuch as the names were left out for the convenience of Mr. McGauley, on account of the printing to be done, that he print the petition today as a whole.

There being no objection, the petition in full is as follows:

Dothan, Ala., July 5, 1901.

To Hons. M. Sollie, George H. Malone, T. M. Espy and R. J. Reynolds:

As our delegates we respectfully petition the Constitutional Convention, through you, to provide in the new Constitution for the election of the Alabama Railroad Commission by the people, and for the payment of their salaries by the State, and that their powers to enforce their rulings and orders be increased:

J. M. Byrd, Dothan Cge. Co., W. W. Barnard, C. B. Farmer, B. F. Reed, Malone Sons, H. L. Solomon, J. W. Burkett, O. P. Green, H. M. Young, A. B. Kelly, P. O. Singleton, W. W. Reenes, A. J. Beverett, T. W. Shechan, I. Boxhorn, Dothan Jewelry Co., Joe Lurie, W. O. Griffith, P. R. Stokes, E. M. Teague, C. S. Lee, E. E. Hammond, J. Harnow, W. H. McNeal, John R. M. Lindon, R. L. Pitcher, S. S. Forrester, J. Buck, R. J. Carlisle, R. W. Clayton, First National Bank, C. Z. Saunders, D. V. Paul, Dothan Ice Factory, J. W. Chambers, Q. T. Howell, D. T. Thomas, C. C. Bush, Geo. Connon, J. J. Snell, W. F. Hennis, M. F. Domon, R. H. Walker, W. C. Feine, L. M. Frey, C. S. Burns, W. H. Grant, A. E. Pace, B. Faulk, J. L. Acree, J. R. G. Howell, W. L. Brown, J. G. Sanders, W. R. McKenzie, Sol. Lune, W. L. Lee, Dothan Hdw. Co., D. W. Ingram, C. C. Hughes, D. W. Bakn, A. W. Hauke, A. C. Coe, B. R. Pitcher, L. Granburg, W. F. Gregory, W. Z. Batson, L. D. Welch, E. J. Bentin, Malone Fur. Co., W. D. Hutchinson, E. R. Porter, W. Harvey, Adam Grant, R. W. Holmes, H. G. Forrester, Abe Adams, M. Scott, C. C. Hughes, A. E. Cunnibil, J. R. Crawford, J. M. Meyrovitz, A. Payne, R. F. A. Millikin, J. Silvers, J. R. Young, J. F. Dawsey, O. R. Morson, G. W. Pitcher, W. B. Tate, C. W. Lewis, J. E. Wise (rate on ice to Abbeville from Do-

than exceeds rate from Montgomery to Abbeville); S. P. Kirkland, J. D. Howell, W. H. King, E. Blumberg, J. N. Cureton, Wm. Passmore, H. E. Petham, W. A. Jelless, H. S. Gilmore, F. E. Sanders, E. E. Vance, C. A. Ralline, J. T. Keyton, Louis Beaum, G. A. Hammond, G. P. Crawford, Robert Boyd, J. M. Payner, J. N. Singletary & Co., J. W. Campbell, J. D. Panist, W. F. Newton, D. D. Holmes, A. K. Peacock, B. A. Jester, Frank Jordon, J. J. Rogers, A. T. Williams, J. W. Sanders, W. M. Hunter, I. L. Carroll, D. D. Strickland, Sam Cherry, E. A. Pearce, J. W. Jones, Tom Kelly, T. J. Walden, R. C. Williams, E. F. Bate, Sr., W. C. Pilcher, James Clark, A. E. Gesner, L. L. Fells, Wm. S. Rutledge, J. E. Hand, S. W. Robbins, O. E. Williams, E. H. Hall, W. F. Hay, Z. T. Pridgen, W. R. Watson, W. T. Hall, The Siftings, J. R. Turner, Dothan Drug Co., H. Watford, W. H. Williams, Saxon & Heard, J. R. McCarty, R. L. Mayes, J. T. Helms, Home Journal, J. E. McCants, Wm. Whentley, T. E. Shalgett, C. L. Pitman, M. Cherry, Batchelor Bros., L. M. Calloway, W. N. Burs, E. O. Trawick, I. A. White, Will Griffin, G. E. Roland, D. E. Young, C. J. Morris, A. Mathis, Logan & Co., J. W. Payne, B. W. Clendin & Co., Strickland Bros., C. W. Rallins, J. A. May, C. R. Wiggins, John J. Crary, J. L. Crawford, J. R. Keyton, Arthur Vesse, W. R. Grubbs, M. Cody, Ed Nix, Quin Nix, H. J. Gresham, Louis Wilk & Co., I. L. Reeves, Culver & Williams, J. A. Peterman, A. Kirkland, T. J. Forrester, Jr.

MR. SMITH (Mobile)—I rise to a question of personal privilege.

THE PRESIDENT PRO TEM.—The gentleman will state the question of privilege.

MR. SMITH (Mobile)—On yesterday, after the debate between the gentleman from Lauderdale and myself, the gentleman from Lauderdale rose to a question of personal privilege. Owing to the location of my seat, I was unable to hear what the gentleman was saying, and called his attention to that fact. The official report omits any note of the fact that I did call the gentleman's attention to the fact that I was not hearing what was being said. I concluded to wait, however, until I could see the official report of the debates between the gentleman and myself, and also his remarks upon the question of personal privilege. I have this morning gone over the record in that respect, and I beg to say that the debate of the gentleman from Lauderdale, as it appears in the record is not substantially what I understood him to say upon the floor of the Convention on yesterday. I desire further to say that if I had understood the remarks of the gentleman to contain only the substance of what the official report contains, there is much that was said by myself that I should have been glad to omit. I thought, however, upon reading those remarks, that probably the things criticised by myself, arose from



the suddenness and passion of the debate, and was not inclined to call any attention to the errors in the record, until reading the gentleman's remarks under personal privilege, I find that they were all based upon the proposition that there was nothing in the debate said by myself calling for the criticism. As the gentleman placed his statement of personal privilege upon that basis, I regret exceedingly that the stenographers should have left out the substance of the matters criticised by myself, and I feel that the omission of those remarks, followed by the remarks of the gentleman upon personal privilege, do me a great injustice. I think a true report of the gentleman should have been made to the Convention.

MR. O'NEAL (Lauderdale)—I rise to a question of personal privilege. The report of the stenographer contains the substance, word for word, what I said, but there were some remarks made yesterday by the gentleman from Mobile which I did not catch at the time, and which I am unwilling to let pass unchallenged.

MR. SMITH—May I ask the gentleman if he did not materially change in the revision much of his remarks?

MR. O'NEAL—I did not make a single change. I desire to say this, and regret to intrude upon this Convention, or to undertake to renew the unpleasant episode of yesterday, but I find in the gentleman's remarks the following language:

"But the gentleman on the contrary, although he here declares that it is wrong in principle to take dispensary money and apply it to the common schools, gets up in this Convention and makes an open bid for an alliance with gentlemen in arraying the dispensary interest against the city of Mobile. He gets up and declares that if they will help him in his attack on my county and city that he will put almost anything in his article to protect the dispensary law. Judge, then, gentlemen of the Convention, between us as to who it is that is willing to trade away the safeguards of the people in order to accomplish his purpose—my purpose being the protection of my people, his purpose being the protection of personal pride as the author of an article that he offers to this Constitution."

I think it proper that I should state, Mr. President, that I announced to the Convention on yesterday that it had been, from the outset, the purpose of the Committee, which I had the honor to represent, to insert no provision in the article in reference to Local Legislation which would abridge the power of the General Assembly to enact such laws in reference to the sale of intoxicating liquors as they might deem proper. I made that statement repeatedly during my argument, and announced that I was willing to incorporate a section in my article to that effect. Now the gentleman says that I made that proposition, in order to secure an

alliance with the dispensary element to strike down the interests of the city of Mobile. I suppose that statement of mine in reference to my willingness to incorporate such a provision in reference to the sale of liquor was the basis of that statement. I desire to say the charge the gentleman makes does me gross injustice, and is unwarranted, and I do believe that the gentleman would have made it except in temper.

I desire to say, furthermore, Mr. President, that the gentleman undertook to refer yesterday, with contempt, to my intellectual powers, and to characterize me as the great chairman of the Committee who arrogated to himself all the wisdom of this Convention. I desire to say whatever intellectual powers I may possess are from my Creator, and I am only responsible for their use. I have never used them for any other purpose, except to promote the interests of the people of my State. I do not expect, nor do I suppose any other delegate in this Convention ever expects to reach the high and lofty pinnacle of greatness upon which the distinguished delegate from Mobile sits, enthroned in solitary and cold grandeur. We common mortals, like myself, can only gaze from afar, in fear and trembling, as one who looks upon some mighty volcano, belching forth fire and smoke.

Now, sir, in reference to any threat on my part to attack the vested interests of the city of Mobile, I desire to say that this controversy is not of my seeking. I desire to say in justice to the other delegates from the city of Mobile, who are my personal friends, and from whom I have only received courtesy and kindly treatment, that I did not come to this Convention with any feeling of hostility to the interests of the great city of Mobile, but with only a earnest desire to promote her prosperity and to advance the interest of every other community in our great Commonwealth. I desire to say that if at any time, the question as to the justice of the city of Mobile retaining part of the general funds of the State, and appropriating it to her own purposes, should be raised in this Convention, I shall then undertake to decide the controversy as becomes a delegate upon this floor, according to my conscience and my judgment, unterrified and uninfluenced by the threats, or by the invective and ridicule of the mighty Ajax from the Gulf City.

MR. SMITH (Mobile) — The gentleman's last remarks, intended as an oratorical display, have no part in the controversy between the gentleman and myself. As stated a few moments ago, either the record of the gentleman's remarks is in error, or I certainly very much misunderstood his debate. If he said nothing more than is contained in that record, as I said in the commencement, I am sorry to have criticised him to the extent that I did, but if he said what I understood him to say, I would today, without one particle of passion, without one feeling of unfriendliness

to the gentleman repeat each and every word that I said in that debate. Coolly and calmly, without anger, without personality, reading it as the production of a stranger, as applied to the argument that I understood the gentleman to make, I believe it to be just and merited, every word and every syllable. There can, now, be but one method of determining whether I was right, or went too far in criticising the gentleman, and that is for me to get from the stenographer a copy of the gentleman's speech as he understood it and took it down. That I propose to do. If, as I said before, the gentleman did not say more than is reported in the official report, then I shall say to the gentleman, gladly, that I am sorry that I criticised him as I did; but, if the gentleman's remarks were as I understood and wrote them down on a piece of paper at the time that they were uttered, and have the paper in my room, then neither anger nor passion can make that which was justly said improperly spoken.

MR. O'NEAL.—Will the gentleman please state what it was that I said that is not in the report.

MR. SMITH—I cannot by heart, Mr. O'Neal, I am bound to say.

MR. O'NEAL.—In substance then.

MR. BURNS (Dallas)—I move that this Convention proceed with its business.

MR. SMITH—I understood the gentleman, in one of his sentences, to say that I was making under a pretense of morality to take funds from the State treasury for the benefit of the corporation of the city of Mobile.

MR. O'NEAL.—I did not make that statement. Will the gentleman permit me to say what I did say.

MR. CUNNINGHAM (Jefferson)—I rise to a point of order that the matter of colloquy between the gentlemen is not a matter of privilege, and I think it is out of order.

MR. O'NEAL.—I simply desire to state what I did say, what I know I said—

MR. HOWZE—I call for the regular order, Mr. President:

MR. SMITH—I desire to say one thing further. I did not say anything yesterday in passion. Not at all. The gentleman I have every reason to feel friendliness for from what I know of him, and I certainly have no feeling of prejudice against the gentleman. There was nothing between us, until the speech he made, and if I misunderstood him, I am sorry that I criticised him.

THE PRESIDENT PRO TEM—The chair will state he cannot help but believe that the difference of opinion between the gentlemen results from a misunderstanding of the facts.

MR. DENT—I want to find out whether the record of the stenographic report of yesterday's proceedings are identical with the Journal. If so, some correction should be made in the Journal.

THE PRESIDENT PRO TEM—The gentleman will suggest the point.

MR. DENT—I find that the section which was amended in the stenographic report purports to read as follows: "The operation of no general law shall be suspended for the benefit of any individual, private corporation or association, nor shall any individual, private corporation or association." I would like to know how it is in the record.

THE PRESIDENT PRO TEM—The clerk informs the chair that the Journal is correct, according to the gentleman's recollection.

MR. LONG (Walker)—Yesterday's report of the proceedings of the Convention, under the head of the minority report of the Committee on Impeachments, as it is reported, says it was signed by Mr. Thompson and Mr. Robinson. There were five of us that signed the minority report, and I desire that the correction be made. Mr. Haley, Mr. MacA. Smith and myself were the names left off, and I desire that the correction be made in the minority report.

THE PRESIDENT PRO TEM—The Journal is correct. That was a typographical error of the stenographic report, which will be corrected.

The report of the Committee on the Journal was read, stating that the Journal for the forty-second day of the Convention had been examined and found to be correct, and the same was adopted.

Upon the call of the roll of delegates for the introduction of resolutions, ordinances, etc.—

Ordinance No. 418, by Mr. Carmichael (Coffee):

Ordinance relating to tax rate of the State:

Be it ordained by the people of Alabama, in Convention assembled:

That Section 4 of Article XI be amended so as to read as follows:

Sec. 4.—The General Assembly shall not have the power to levy, in any one year, a greater rate of taxation than fifty-five one-hundredths of 1 per centum on the value of the taxable property within this State; provided, that for the support of the public schools of the State and for the purpose of providing pensions for ex-Confederate soldiers and sailors, their widows and orphans, or

for either of these purposes, an additional rate not exceeding twenty one-hundredths of 1 per centum may be levied.

Referred to the Committee on Taxation.

MR. GRAYSON—I have a petition signed by a large number of persons which I move to be read.

The petition was read as follows:

We, the undersigned business men and citizens of the city of Huntsville, Madison county, most respectfully petition our delegation to the Constitutional Convention, Hons. R. E. Spragins, R. H. Walker, A. S. Fletcher and J. W. Grayson, and the members of the Constitutional Convention not to enact any law in our Constitution for the collection of a privilege tax, we believing that such a tax is unjust.

The President here resumed the chair.

Ordinance No. 419, by Mr. Jones of Walker:

An ordinance to provide for the issuance of bonds, in the event of the annexation of any foreign territory to this State by purchase.

Be it ordained by the people of Alabama, in Convention assembled, that in the event of the annexation of any foreign territory to this State by purchase, that the General Assembly with the approval of the Governor shall be authorized to provide for the issuance of State bonds to pay for the purchase of such foreign territory, anything in this Constitution to the contrary notwithstanding.

Referred to the Committee on Legislative Department.

MR. JONES (Wilcox)—There is a remote possibility that the State, before the adoption of another Constitution, may acquire foreign territory by purchase. There is no provision made in the report of the Committee on Legislative Department authorizing the issuance by the State of the necessary bonds to pay the purchase money for such territory. Section 49 of the report reads as follows: "In the event of the annexation of any foreign territory to this State, the Legislature shall enact laws extending to the inhabitants of the acquired territory, all the rights and privileges which may be required by the terms of the acquisition, anything in this constitution to the contrary notwithstanding.

The section is a copy of section 51 of the Article on Local Legislation in the Constitution of 1875. In fact it is in the Constitutions of 1819, 1861, 1868 and 1875, but in neither of these constitutions is there any provision made to pay for the purchase of such foreign territory. The ordinance offered by me, is for the purpose of calling the attention of the Committee on Legislative

Department to the omission of such provision in their report. It may be that it should be added to their report as a separate section. In my opinion, however, it could be added to Section 49, as an amendment, but I leave that to the better wisdom of the Committee.

MR. VAUGHN—I rise to a question of privilege.

THE PRESIDENT—The gentleman will state the question of privilege.

MR. VAUGHN—On yesterday I offered a substitute to Section 5 of the report of the Committee on Local Legislation, and the report has me as saying that under the Constitution of Mississippi, the Legislature can pass laws whereby towns may enact their local laws. I said whereby counties could do so.

Just beneath that, it has me as saying that under the substitute offered by myself, the legislature would not have the authority to delegate that court, or any other body in the county, the authority to enact these local laws. I asked Mr. Pettus the question, and that question was this, under the substitute as offered by myself, would not the Legislature have authority to delegate to the Commissioners Court, or any other body, in the county, the authority to enact these local laws. I would like for the reporters to make the correction.

THE PRESIDENT—The stenographers will be requested to note the correction.

MR. SANDERS—I ask leave to introduce a very short resolution.

The consent was given.

Resolution No. 240 by Mr. Sanders:

Resolved, That the Sergeant-at-Arms be instructed to place at least four more fans in this hall.

MR. SANDERS—For the purpose of putting that resolution upon its immediate passage, I move the suspension of the rules.

Upon a vote being taken, the rules were suspended.

Upon a further vote the resolution was adopted.

On the call for reports of Committees the clerk read the following report, submitted by Mr. Foster:

Your Committee on amending the Constitution respectfully report back Ordinance 412 by Mr. Merrill of Barbour, with the recommendation that it be adopted by this Convention.

Respectfully submitted,

Ordinance No. 412, by Mr. Merrill:

An ordinance relating to the bonded indebtedness of the State—

Be it ordained by the people of the State of Alabama in Convention assembled,

That an act of the General Assembly of Alabama, entitled "An act to consolidate and adjust the bonded debt of the State of Alabama," approved February 18, 1895, and an act amendatory thereto, entitled "an act to amend Section 6 of an act to consolidate and adjust the bonded debt of the State of Alabama," approved February 16, 1895, which said last named act was approved February 16, 1899. Be and the same are hereby made valid. The Governor is authorized and empowered to act under the same and carry out all the provisions thereof.

Upon the call of the standing committees, the Committee on Education submitted the following report:

Report of the Committee on Education.

MR. President:

The Committee on Education directs me to submit an ordinance to be incorporated in the new Constitution as Article — Education.

A few brief explanations and introductory remarks are necessary to the proper understanding of the work and purposes of the Committee.

Section 1. This section has been changed by striking out the word "equal" as a basis of apportionment and substituting in substance and fact the provision for a free school term of equal length as the basis of division of the school fund in the respective townships and districts; but leaves the apportionment to the several counties according to the number of school children therein. The latter plan is not a change.

Sections 2 and 3 remain unchanged.

Section 4 presents a change in detail, but not in effect. It provides that all poll taxes shall be applied to the public schools in the counties where levied and collected, but leaves the regulation thereof as to amount and those subject to such tax to the Article on Taxation and Suffrage.

Section 5 presents apparently the greatest change, yet in fact is largely a change in method only.

The object of the Committee was and is merely to guarantee as nearly as possible the present State school fund as the minimum constitutional fund.

The Sixteenth Section interest, and the surplus revenue funds are trust funds and must remain unchanged; hence the first part of the old Section 5 remains unchanged.

The present State appropriation proper is \$550,000 and to this is added the special 1 mill tax, which for the year 1900 has yielded to this date \$256,117.50 as shown by the Auditor's books; and a reliable estimate from this office shows that, notwithstanding the total assessment of \$266,893,288 for the year 1900, the 1 mill tax will not exceed \$257,000. This being true, the total fund available for the scholastic year ending next September, exclusive of poll tax and trust fund interest will be \$550,000 plus 1 mill tax, \$257,000 or \$807,000.

In lieu of this annual appropriation and 1 mill tax, the Committee has substituted an annual 3 mill tax, or 30 cents on each hundred dollars. A 3 mill tax on the assessed valuation of last year would yield \$771,000 as an annual fund, which would be \$36,000 less than the fund for the present year. If the State should prosper and the assessment for 1901 should reach \$280,000,000, a 3 mill tax would yield \$840,000 as a school fund, because only about 96 per cent of the total is collected. It will therefore, be readily observed that, the 3 mill plan would approximately furnish the same revenue year in and year out, that we now have from the general appropriation, and the 1 mill tax. The superior merit of this plan is that it fixes the school fund permanently, and does not leave it to the general assembly as a matter of contention at every session. It is a sliding scale. If the State prospers and assessments increase, the schools get a larger fund. If values decrease, then the schools share as they should, the adverse conditions.

The present system of general biennial appropriations, supplemented by the 1 mill special tax, gives rise to endless trouble in bookkeeping and estimates of the fund, and to efforts and alarm upon the part of true friends of education lest the appropriation may be decreased and the school term shortened.

The Auditor in his report for 1899 recommends that the plan of this Committee be adopted, though at a different rate.

Section 6 remains unchanged.

Section 7 remains unchanged except that the term of office and mode of election are left out for the reason that the Executive Article has already provided for these things.

Section 8 and 9 remain unchanged.

Section 10 remain unchanged except that the Institutions for the Deaf and Blind at Talladega and the Alabama Girls' Industrial School at Montevallo are State Educational Institutions that should properly be included therein, and it is so done.



Section 11 is a new section which provides for taking a school census not oftener than once in two years, and throwing proper safe guards around the same. This it seems would readily command the appreciation and approval of the Convention.

Section 12. This is a new section which is a modification of an amendment offered to the Article on Taxation by the Chairman of the Committee. It provides for a 1 mill local tax, with the county as a unit, to be voted in the respective counties by 60 per cent of the qualified electors voting at such election. This provision has been favorably reported because of its merits and in view of the reduction of the State limit of taxation to 65 cents. Under it, the State and county rate combined can never exceed \$1.25 per hundred, and it is local self-government in behalf of better schools.

Section 13 is Section 11 of the present Constitution and is incorporated herein without change.

There are some minority views which will either be attached to this report, or expressed upon the floor of the Convention at the proper time, the gentlemen in the minority having reserved this privilege.

All ordinances and resolutions are herewith returned, the same having had careful consideration by the Committee. They are of the opinion that any further matters than those reported in this Article should be left to the General Assembly.

Joseph B. Graham, Chairman.

## ARTICLE —.

### Education.

Section 1. The General Assembly shall establish, organize and maintain a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of 7 and 21 years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the county as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.

Sec. 2. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted to this State or given by the United States for educational purposes, shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations.

Sec. 3. All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons, who die without leaving a will or heir, shall be faithfully applied to the maintenance of the public schools.

Sec. 4. All poll taxes levied and collected in this State shall be applied to the support of the public schools in the respective counties where levied and collected.

Sec. 5. The income arising from the Sixteenth Section Trust Fund, the Surplus Revenue Fund, until it is called for by the United States Government, and the funds enumerated in Sections 3 and 4 of this Article, together with the special annual tax of 30 cents on each one hundred dollars of taxable property in this State, shall be applied to the support and maintenance of the public schools, and it shall be the duty of the General Assembly to increase, from time to time, the public school fund as the necessity therefor and the condition of the treasury and the resources of the State may justify. Provided, that nothing herein contained shall be so construed as to authorize the General Assembly to levy in any one year a greater rate of taxation than 65 cents on each one hundred dollars' worth of taxable property.

Sec. 6. Not more than 4 per cent of all moneys raised, or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; provided, that the General Assembly may, by a vote of two-thirds of each House, suspend the operation of this section.

Sec. 7. The supervision of the public schools shall be vested in a Superintendent of Education, whose powers, duties and compensation shall be fixed by law.

Sec. 8. No money raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian or denominational schools.

Sec. 9. The State University and the Agricultural and Mechanical College (now called the Alabama Polytechnic Institute), shall each be under the management and control of a Board of Trustees. The Board for the University shall consist of two members from the Congressional district in which the University is located, and one from each of the other Congressional districts in the State. The Board for the Agricultural and Mechanical College shall consist of two members from the Congressional district in which the college is located and one from each of the other Congressional districts in the State; said trustees shall be appointed by the Governor by and with the advice and consent of the Senate, and shall hold office for a term of six years and until their

successors shall be appointed and qualified. After the first appointment each Board shall be divided into three classes, as nearly equal as may be. The seats of the first class shall be vacated at the expiration of two years, and those of the second class in four years, and those of the third class at the end of six years from the date of appointment, so that one-third many be chosen biennially. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such. The Governor shall be ex officio President, and the Superintendent of Education ex officio a member of each of said Boards of Trustees.

Sec. 10. The General Assembly shall have no power to change the location of the State University or the Agricultural and Mechanical College, or the Institutions for Deaf and Blind, or the Alabama Girls' Industrial School, as now established by law, except upon a vote of two-thirds of the General Assembly, taken by yeas and nays and entered upon the journals.

Sec. 11. The General Assembly shall provide for taking a school census by townships and districts throughout the State not oftener than once in two years, and shall provide for the punishment of all persons or officers making false and fraudulent enumerations and returns; provided, the State Superintendent may order and supervise the making of a new census in any township, district or county, whenever he may have reasonable cause to believe that false or fraudulent returns have been made.

Sec. 12. The several counties in this State shall have power to levy and collect a special tax, not exceeding 10 cents on each hundred of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county and voted for by three-fifths of those voting at such elections; but the rate of such special tax shall not increase the rate of taxation, State and county combined, in any year, more than \$1.25 on each hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges and payment of debts existing at the ratification of the Constitution of 1875; provided, that such funds so raised shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in said county, that the school terms of the respective school shall be extended by such supplement as nearly the same length of time as practicable.

The General Assembly shall provide for carrying the provisions of this section into effect.

Sec. 13. The provisions of this Article and of any act of the General Assembly passed in pursuance thereof to establish, organize and maintain a system of public schools throughout the

State, shall apply to Mobile County only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said county shall be entitled for school purposes, and to make reports to the Superintendent of Education as may be prescribed by law. And all special incomes and powers of taxation, as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the General Assembly; provided, that separate schools for each race shall always be maintained by said school authorities.

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Minority report of the Committee on Education :

Mr. President, the undersigned minority of your Committee on Education, does not concur in that part of the report embraced in Section 9 in reference to the University of Alabama.

While this institution has done great service for the State under existing conditions, it is the opinion of the minority that the usefulness of the University will be enhanced by providing that the Governor shall not be a member of the Board of Trustees, and that the said board be authorized to elect its own presiding officer. It seems in line with a true and broad policy that the appointing power should not be a member, nor ex officio president, of the board appointed.

No recommendation is made by this minority in regard to other State institutions for the reason that they have expressly petitioned that no change be made in their management.

Your minority does not think that the fact that other institutions are satisfied with the existing conditions should deter the University from taking a progressive step. The State University is in a class by itself, and the fact that the Governor is ex officio a member of the Board of Trustees of the Alabama Polytechnic Institute or of the Board of Trustees of certain agricultural colleges is no reason why he should be a member of the Board of Trustees for the University.

Therefore, the undersigned minority of your Committee on Education recommends that the words "each of said boards of trustees" at the end of Section 9 of the report be stricken out, and that there shall be added in lieu thereof the words "the Board of Trustees of the Alabama Polytechnic Institute. The Superintendent of Education shall be ex officio a member of the Board of Trustees of the University; and the said Board shall elect its own President."

(Signed) Erle Pettus, John T. Ashcraft,, P. W. Hodges, John A. Rogers, D. S. Bethune, Jere N. Williams, Henry Opp, Minority of the Committee on Education.

### Minority report:

Mr. President, the undersigned, members of the Committee on Education, regret that they are unable to agree with the majority on the provisions of Section 12 of the article on Education, and beg leave to submit a minority report proposing a substitute for said Section 12.

This section as reported by the majority of the committee provides for the levy by the county of a one mill tax for schools. The majority claim this is local self-government in behalf of better schools. The leading educators of this state agree that the cause of education would be greatly accentuated by a wise plan of local assessments for schools because of the local initiative and pride produced by a direct contribution by a community to its schools. Local assessments contribute to the interest in the schools as well as to its funds. Educators recognize the former as the more valuable contribution. The plan proposed by the committee has none of the advantages of local assessments.

The minority believe that both local and race initiative should be encouraged. The plan proposed by them has these two ends in view. They are aware that some persons have urged constitutional objections against the right of each race to contribute something to its own schools independently of the other race, but they do not believe these objections are well taken. In the Cummings law (175 U. S. p 528), the Supreme Court said "while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of race, the education of the people maintained by State taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools can not be justified except in the case of a clear and unmistakable disregard of the rights secured by the supreme law of the land."

The court was considering an application for "an injunction that would only impair the efficiency of the High school, provided for the white children, or compel the board to close it." The court said: "If that were done, the result would only be to take from white children educational privileges enjoyed by them without giving to colored children additional opportunities for the education furnished in High schools." The colored school children of the county would not be advanced in the matter of their education by a decree compelling the defendant board to cease giving support to a High school for white children," and the injunction was denied.

In the Owensboro case (1 Federal Reporter, 297), the court held that the city of Owensboro did not have the right to impose taxes upon all the citizens of the city of Owensboro "without re-

ward to their willingness or unwillingness to be taxed," and then distribute the proceeds between the races on an unfair and unequal classification or basis." Here the governmental agency was exercising its power to tax all persons alike and its power to distribute one way for the white people and another way for the colored people. The court held that this did not give to all persons within the jurisdiction of the city of Owensboro the equal protection of the laws and was violative of the Fourteenth amendment.

In the Puitt case (94 N. C. 709), the court held that the Statutes of the State of North Carolina, which provided that white voters in a township might vote to levy a special assessment upon property belonging to white persons for school purposes was violative of two provisions of the Constitution of that State. One providing that all tax should be uniform and the other providing that there should be no discrimination in favor of or to the prejudice of either race. The court refused to inquire into the consistency of the statute with the recent amendments to the Constitution of the United States, but the court added: "It is not every distinction dependent upon race, or color, that comes in conflict with the Federal Constitution, but only when it produces inequality of rights or interests; and when this is the result the State legislation from which it flows is rendered inoperative. When the case essential privileges are secured to all, such legislation is valid and rests in the sound discretion and views of public policy of those who make the laws." One of the justices declined to admit that the plan of local assessment referred to was violative, even of the strong provisions of the State constitution. He says: "I am of opinion, that the statute authorizes in effect a local assessment and does not prescribe a public tax, in the sense of the Constitution, and that local assessments are not necessarily confined to particular real property to be affected by them favorably in contemplation of law.

It is universally conceded that the State may by its Constitution provide for separate schools for white and colored children without violating the Federal Constitution. If separate schools may be maintained certainly separate districts may be organized for the patronage of such schools.

The section proposed by the minority proposes that white school districts may be laid out to the greatest advantage of the white people and that colored school districts may be laid out to the greatest advantage of the colored people.

It is provided by Section 1 of the article that the general school funds shall be so apportioned as to maintain equal school terms in these districts. So far it will be admitted that all receive the equal protection of the laws. The substitute further proposes to permit each school district to impose upon itself a local assessment the better to carry out the purpose for which the district

was organized. In this right the colored districts and the white districts are equally protected. Each district is guaranteed from the general school funds reasonable school terms. If the members of one district see fit to impose on themselves a special assessment how can it be said that the other, which has the same right, is denied the equal protection of the laws. It is said that one district owns more property than another, the same may be said about the different counties under the plan proposed by the majority. The white race being given an opportunity to do something for itself as a race will no longer be irritated by the disproportionate share which they contribute to and receive from the general fund. The negro being given the opportunity to do something as a race will no longer be in the position of an absolute mendicant, and will have the opportunity of showing himself worthy of the large share he receives from the general fund. He will have the opportunity of cultivating self-respect and self-reliance. Race pride and race fraternity will take the place of that suspicious envy which now manifests itself in the commission of those crimes which shock humanity.

The primary purpose of this Convention was to establish a more just relation between the two races and the State, and so to insure domestic tranquility and prosperity.

The divorcement of the white and colored school systems stand side by side in importance with the proper suffrage regulation.

John T. Ashcraft,

Erle Pettus,

P. W. Hodges,

Henry Opp.

Substitute proposed by minority for Section 12 of majority report of the Committee on Education.

12. It shall be the duty of the County Superintendent of Education, or other school officer in each county by and with the advice and consent of the Court of County Commissioners, or body of like jurisdiction, to organize the white people of the county into white school districts, according to their respective needs and advantages without reference to each other as to territorial boundaries. Provided no incorporated town or city maintaining a system of public schools as provided by law, shall be separated into districts without the consent of the Mayor and Board of Aldermen of such town or city.

For the purpose of building, enlarging, improving or furnishing school houses in any district, or for the purpose of supplementing the general school funds received from Federal, State, county,

municipal and other sources, the Court of County Commissioners, or body of like jurisdiction shall, as hereafter provided, levy a special assessment of not more than one-fourth of one per centum in any one year upon the property of the white persons situated in a white district, or, upon the property of colored persons situated in a colored district; provided, no such levy shall be made except upon the request of three-fifths of the voters voting at an election held for that purpose and residing in the district. At such election in a white school district only qualified white electors shall be permitted to vote, and in colored districts only qualified colored electors shall be permitted to vote. It shall be the duty of the Probate Judge to order such election in any district upon the petition of not less than one-fourth of the voters who will be entitled to vote at such election. The order for such election shall state the purpose for which it is proposed to make the assessment, the rate of the proposed assessment and the number of years during which such assessment is proposed to be made. Notice of such election shall be given and the election held in such manner as may be provided by law for such special elections. No proposition shall be made at any such election to levy such special assessment during a period of more than four years.

When any property belonging to a corporation is situated in a white school district where a special assessment is to be made as herein provided such assessment shall be levied upon such proportion of the value of such property as the number of white children of school age in the county bears to the whole number of children of school age in the county. When such property is situated in a colored school district where such assessment is made, it shall be levied upon such proportion of the value thereof as the number of colored children of school age in the county bears to the whole number of children of school age in the county.

John T. Ashcraft,

Erle Pettus,

B. W. Hodges,

Henry Opp.

**PRESIDENT PRO TEM (Rogers)**—The report of the Committee on Education will be printed and taken up in regular order unless otherwise directed by the Convention.

**MR. GRAHAM (Talladega)**—I move that the report be printed and lay upon the table and be taken up in the order in which it has been reported and be considered by the Convention.

**THE PRESIDENT PRO TEM**—Such will be the order.

**MR. ASHCRAFT**—In reading the article the word "dollars" in the 12th Section of the Article was omitted, if it is not in there it ought to be corrected.



The clerk read the section again and the word dollars did not appear.

MR. ASHCRAFT—I ask unanimous consent to have it corrected by inserting the word “dollars.”

Unanimous consent was accorded and the correction made.

MR. JACKSON (Lee)—I rise to a question of personal inquiry. I would like to know if the minority are offering their amendments now?

THE PRESIDENT PRO TEM—The minority is offering a substitute for Section 12 of the report which has just been read.

MR. JACKSON—I would like to know if they have a right to do that now on the first reading.

THE PRESIDENT PRO TEM—The minority report is connected with the majority report as is always the case.

PRESIDENT PRO TEM—The report will take its regular course unless the Convention orders otherwise.

The Convention then proceeded with the regular order of business, and after the conclusion of the call of Committees:

PRESIDENT PRO TEM—The next order is unfinished business. The question is on the amendment to Section 5 of the report of the Committee on Local Legislation.

MR. HINSON—I wish to offer an amendment.

THE CHAIR—There is an amendment pending.

MR. HINSON—I offer my amendment to that amendment.

MR. FOSTER—The amendment, I think was withdrawn.

MR. HINSON—There was an amendment by the Chairman of the Committee on Legislation, and there was an amendment to that amendment by the gentleman from Dallas, and the gentleman from Dallas by unanimous consent withdrew his amendment.

MR. O'NEAL—I have a substitute for the entire section.

MR. OATES—The gentleman is quite correct. I had, for the Committee on Legislative Department, submitted the Section found in the present Constitution and on yesterday afternoon explained it, and the gentleman from Lauderdale had the floor speaking against it, and at the time of adjournment I had been recognized for the purpose of propounding a question to him, but the clock struck the hour of adjournment and we quit at just that point. I did not get the opportunity to propound the question.

THE PRESIDENT—The Chair so understands.

MR. HINSON—My amendment has already been sent up. I have been recognized by the Chair, and the substitute offered by the gentleman from Lauderdale is out of order.

PRESIDENT PRO TEM—I will state to the gentleman that the substitute has not been accepted, it has not been read or announced.

MR. HINSON—I had the floor for the purpose of introducing my amendment, and claim it is in order to read by amendment.

PRESIDENT PRO TEM—The point of order is not well taken.

MR. O'NEAL—I had the floor at the time of adjournment.

PRESIDENT PRO TEM—The Chair will state that he had recognized the gentleman from Lauderdale, that is why he decided the gentleman from Lowndes was out of order.

MR. O'NEAL—I desire to have the substitute read for Section 5 and pending amendments.

The Secretary read the substitute as follows: "The General Assembly may by general law confer upon courts of County Commissioners, Boards of Revenue or other courts, or upon such other tribunals in each county, as may be created by the General Assembly, such powers of local legislation and administration touching such matters and things which are not provided by general law, and are not inconsistent with the provisions of this Constitution, as the General Assembly may from time to time deem expedient."

MR. O'NEAL—Mr. President, the purpose of that amendment, or substitute, was not to confine the legislature to vesting legislative powers entirely in Courts of County Commissioners, Boards of Revenue or other courts of like jurisdiction. It authorizes the legislature to create in any county in the State such a tribunal as the necessities in that county may require, upon which can be vested such legislative powers as may be expedient. Now there may be counties in this State that are unwilling to confer upon the Commissioner's Court any such legislative powers. The purpose of that substitute is to authorize—

MR. FOSTER—I would like to hear that substitute read.

The Clerk again read the substitute.

MR. O'NEAL—I desire to state that the only change made in the original section is by adding the words "or such other tribunals in each county as the General Assembly may create," and changing the other words in the Section which say: "Touching all such matters and things not provided by general law." The idea being not to require the legislature to confer upon such tribunal legislative power as to all matters not provided for by general

law, but such matters not provided by general law as they might deem proper.

MR. COBB—Is it necessary to put that in the Constitution in order to give the legislature that power Haven't they that power without this in the Constitution?

MR. O'NEAL—I do not think so under the authorities which I read yesterday evening Cooley on Constitutional Limitation, and other decisions, that the legislature could confer power upon any other tribunal, without a provision in the fundamental law to that effect. The doctrine laid down in Cooley on Constitutional Limitations was that the legislature could not vest its legislative power in any other tribunal, and the legislature of New York, realizing that difficulty did provide in their Constitution a provision similar to this. Now we are not wedded especially to the idea of conferring this power upon the courts of County Commissioners. There is force in the argument that in some counties it might be dangerous on account of the character of the courts, hence we provide that the legislature can, whenever necessity arises, create in any county in the State, a special tribunal in which they might vest any matters of local legislation—that they think expedient. This don't require the legislature to do it, but simply gives them a power if in the future a contingency of that sort should arise. In my judgment a General Assembly can provide by general law for most of these matters, still we cannot foresee what the future may bring forth, what we want to do is to provide for a contingency that may arise.

MR. WEATHERLY (Jefferson)—I desire to ask if the substitute uses the words "or other courts?"

MR. O'NEAL—It does.

MR. WEATHERLY—I think it might read better, since you have put in the word "tribunal" to strike out those words "or other courts" and let the word "tribunal" stand.

MR. O'NEAL—The reason that was left there was it might be expedient to give it to the Probate Judges in some counties.

MR. WEATHERLY—But really the Boards of Revenue and County Commissioners are only quasi courts, it is a legislative tribunal.

MR. O'NEAL—I believe the suggestion of the gentleman from Jefferson is wise, and I ask unanimous consent to strike out the words "or other courts" in the substitute.

There being no objection the words were stricken from the substitute.

MR. SMITH (Mobile)—I have been requested by Judge Coleman of Greene, who is now absent, to offer an amendment to the amendment to the Section.

MR. PETTUS—I rise to a point of order. There are two amendments and a substitute pending and the amendment offered by the gentleman from Mobile is not in order at this time.

PRESIDENT PRO TEM—The understanding of the Chair is that the amendment is in order, or the amendment to the substitute. This is the substitute offered by the Committee to its report and there being but one substitute the amendment of the gentleman from Mobile is in order.

MR. PETTUS—There is a misapprehension about the number of amendments pending if the Chair has stated the number of amendments correctly.

THE PRESIDENT PRO TEM—The Chair is informed by the Clerk that there are two amendments, therefore the amendment offered by the gentleman from Mobile is not in order.

MR. SENTELL—I believe the question before the Convention is the amendment offered by the gentleman from Lauderdale, is it not?

THE PRESIDENT PRO TEM—That is the question before the House, the substitute for the amendment of the gentleman from Lauderdale.

MR. SENTELL—I rise to discuss the question. It seems to me that the question of local legislation as viewed in the report of the Committee is not exactly the proper thing. I think it would be very unwise. If it is the purpose to confer upon Commissioner's Courts or other courts of like jurisdiction the power to legislate, I think it would be unwise. It seems to me that the amendment offered by the gentleman from Montgomery, that is substantially the same as in the present Constitution, covers the question, and is all that we need on this line. Now then, if the purpose of that is simply to permit Commissioners' Courts and other courts of like jurisdiction to put into effect general laws already passed on the subject, why then it might be all right. Now we know that under the law as it is at present in this State, any town may incorporate itself under a general law by making application to the Probate Court, and in many counties any district or section may provide for a stock law district by making proper application to the Commissioners' Court, and it seems to me, Mr. President, that all that we want is to have a general law that provides for the proper courts to put into effect, this general law whenever it is desirable, and it seems to me that a general law might be passed that would cover every Section of local legislation that is presented by this Article. For instance, if it is desired to provide a separate school district a

general law may provide that the Commissioners' Court may lay off separate school districts under limitations and restrictions that would be perfectly satisfactory, and the same would be true of every other section or a kind of local legislation that is prohibited by Legislature, but I think it would be very unwise and very unsafe if the purpose of this Section is to give to Commissioners' Courts power to legislate, because I do not think they ought to have that power. Now I think the amendment of the gentleman from Montgomery on yesterday evening covers the subject entirely, and is sufficient to give to the courts all the power that is necessary, and I shall oppose the report offered and the substitute offered by the Committee, using the words "the power to legislate" because I think that is a dangerous power to give to these minor tribunals. Now we know as a matter of fact that many Commissioner's Courts are very wise, and are good, conservative men, but it often happens that they are the contrary and do not know anything about legislation, and it would create a good deal of disturbance in the county and be the cause of a good deal of dissatisfaction if such a thing were adopted.

MR. PETTUS—I desire to ask the gentleman a question: He says he does not believe the Commissioners' Courts ought to legislate. Does he not know that it has been held by the Supreme Court that the Commissioners' Courts are quasi legislative bodies, and don't they legislate in levying taxes, appropriating money, opening roads and other local questions?

MR. SENTELL—I do not think that is legislation. They only do these things under the provisions of a general law that restricts and limits them, as I think is proper.

MR. PETTUS—I would like to ask the gentleman further in respect if the legislature delegates powers of local legislation as proposed under this substitute would not they come then under the general law to restrict and keep them in proper limits?

MR. SENTELL—If such were the case it would be all right, but I think it very unwise to put the word in there to delegate to them the power to legislate.

PRESIDENT PRO TEM—The question is upon the substitute offered by the gentleman from Lauderdale, is the Convention ready for the question?

MR. deGRAFFENREID—I would like to hear the reading of the substitute.

MR. O'NEAL—I ask unanimous consent to add a proviso to the substitute to be considered as a part of the substitute.

MR. BULGER—We would like to hear the proviso before we give the consent.

The Clerk read the proviso as follows: "Provided, such courts or tribunals shall not be authorized to exercise such powers of local legislation except during a term thereof held exclusively for that purpose, and that such term shall not be extended beyond thirty days, and shall not be held more than once in two years, but special terms of such court for such purpose of not more than three days duration may be authorized to be called at any time by the Judge of Probate when necessary to consider one or more special subjects of local legislation; and provided further, that the General Assembly may abolish such courts or other tribunals, and establish other courts or bodies with like and other powers in lieu thereof, when in the discretion of the General Assembly it may be deemed to be for the best interest of any county."

MR. deGRAFFENREID—I ask that the substitute itself be read.

The Clerk again read the substitute.

PRESIDENT PRO TEM—Unanimous consent is asked to add this proviso to the substitute of the gentleman from Lauderdale. The Chair hears no objection and the proviso will be added.

MR. OATES—I desire to consume a few minutes in opposition to the proposed substitute. It is in brief, this: Not only to confer upon the legislature power to provide for the doing—

THE PRESIDENT PRO TEM—The house will please be in order.

MR. OATES—In conferring or attempting to confer by this substitute power upon Boards of County Commissioners and others, powers of legislation, it proceeds to direct them how they can exercise these powers, and then the proviso is that if the scheme which it adopts does not work well that the legislature may change it and try another way. Now gentlemen of this Convention, there is no use of launching out into that kind of speculation and it has no proper place in the Constitution of the State. It is untried, it is entirely speculative, and there is no necessity for it. Then isn't it safer and wiser to follow the beaten path in which we have moved and our legislature acted in the past than to launch out upon a new scheme of this kind. Why, sir, it may be said, and doubtless will be thought by some of the delegates, that the legislature under this amendment which I offer and which is found in the present Constitution have not enacted general laws for the doing of all these things which by the 30 or 31 provisions they cannot do after this Constitution is adopted, for the reason, not of the incapacity of the legislature to provide, but because these inhibitions have not existed hitherto, if they had, who has any doubt that our legislative bodies would have been equal to the task. Every delegate here knows that bills of this character would go to the Committee on Judiciary of the two Houses, composed

in the main of lawyers, as able as the lawyers who largely compose this body. Shall we assume that they are incapable? What right have we to do so? They are such men as have been sent here by the people, and I presume that they are capable of enacting general laws. So far, sir, if we examine into the code and subsequent acts, we find that they have already provided several general laws for the doing of these things, which the legislature under the present Constitution had abstained from enacting in special statutes. The probate judge or probate court has jurisdiction of many, the court of chancery has jurisdiction, the circuit court has jurisdiction in some cases. Will you undertake to say by your action that the Committee on Judiciary of the House of Representatives and the Senate are incapable of extending those laws and providing ably and wisely for all these things which cannot be accomplished by direct local legislation to be done. Why, it is not wise to confer such extensive powers upon the Commissioners' Court, composed in the main of good men, but men as a rule not experienced at all in the matters of that kind, and we get up more confusion, more trouble, infinitely more than results now from local legislation. Now, sir, the legislature or General Assembly, whichever it may be called, I prefer to call it legislature because it is one word, and everybody nearly uses it, it is common sense—the legislature is capable of dealing with the question. They can provide general laws under which all these things can be done and should they fail to do so—they may not act the first session; some things may be overlooked; they may fail to agree on some, but the other provisions which have been adopted, and which I presume will be, do not deprive the people entitled to special relief from local legislation, where no general law has been passed. It should not, and there is nothing we cannot argue from any standpoint in reason that the Legislature is incapable of dealing with it. Now the amendment that I offer is plain and simple, no complication about it. Whenever you launch out and undertake to say how they shall do this, deal with this or that thing, unless you specify everything which the foregoing provision that has been passed on and adopted, prohibiting and denying the Legislature the right to do it, you get up inextricable confusion, room for doubt, litigation and trouble. Now listen carefully at this: "The Legislature shall pass general laws," not that they may, but that they shall pass general laws, under which local and private interests shall be provided for and protected. What farther do you want to go? You give them ample power and leave it to them to do it, but gentlemen supporting this proposition put in as a substitute for the section and pending amendment, not only undertake to confer the power, but they have undertaken to tell the Legislature how to do it, and with another provision if it don't work they can undo it and try another scheme. That should have no place in the Constitution. Here is a simple declaration that confers all the power you wish to give the Legislature or General Assembly, which ever you may call it,

and every gentleman can feel a guarantee that it will be properly attended to just as much and effectually as that body attends to other matters committed to it, and I hope the substitute will be voted down and this simple proposition adopted.

MR. BULGER—It seems to me that this Convention is going as far wrong with their limitation on the legislative power of this State, as the Legislatures in the past have gone wrong in enacting local laws. Now the proposition in Section 5 is to transfer from the representatives of the people in the General Assembly, from all parts of the State, the power to legislate, back to the separate counties by their Commissioners' Courts or Boards of Revenue. Now, I understand the purpose of the committee in reporting this section is to simplify the local laws in this State and to make the laws easier to find and easier to understand, and to curtail the expenses upon the people of enacting local laws and to make the laws better and more wholesome to the people of the State. I submit, sir, this section, if adopted, will do neither; but will have quite a contrary effect in this State. It will not make the laws evidently any better or safer, because no gentleman on this floor will contend that his Commissioners' Court at home is more capable of legislating for the people of his county than the General Assembly of Alabama, composed of 100 select men. In addition to that, they have a check upon them of thirty-three men in the Senate; and, in addition to that, they have the great safeguard of the veto power of the Executive of this State. I am one that does not believe the Commissioners' Court is more capable of making laws for a county than this legislative body in Alabama. Therefore, I cannot believe that the laws would be better made. Now, Mr. President, will they be easier to find or easier to understand? I submit if the laws are put into one book, though it be as large as the largest book written, they are easier found and easier understood than if they are enacted in all the counties in Alabama and scattered all over the State, so no man might find them, and the wisest lawyer in Alabama cannot understand the laws, because they are scattered from one end of the State to the other, and they are put in sixty-six books instead of in one. I say as to that proposition, it falls to the ground. As to the expense of making these laws, I submit it will cost the people of Alabama largely more money to have their local laws enacted under this proposed section of the Constitution than it will for the Legislature to do it. We put in this Constitution a limitation on the time which the Legislature shall remain in session—fifty days. I have never known a Legislature in Alabama or in any other State to adjourn before its time expired by limitation. Now, if you take this work from the Alabama Legislature, they will give their whole time to as many general laws for local purposes as possible, and then to the general laws of the State. Fifty days is long enough to pass all the local laws necessary for the people of Alabama; and is long enough to



pass all the general laws for our State. Now if these Commissioners in the different counties in Alabama are to be called together and organized into a legislative body, without limitation of time, as it appears from this ordinance, who can tell what the cost will be to the people of Alabama, though it comes out of the different counties of the State?

MR. O'NEAL—Will the gentleman allow me to interrupt him?

MR. BULGER—Certainly.

MR. O'NEAL—The substitute does limit their sessions. It limits their sessions to not over thirty days in two years; and to three days called meetings on each special subject; and not over three days when called especially to consider one or more subjects of local legislation.

MR. BULGER—You multiply the number of counties in this State by the thirty days limit, and you will have more dollars to pay the Commissioners in Alabama than you have for the Alabama Legislature to do the same work. It makes no difference with the tax-payer whether he pays his taxes to support a county institution or whether he pays it to support a State institution. It is a burden on him and it makes no difference into what treasury his mite may go. I submit that the cost of this legislation is not less than it will be under our present plan. I believe this Convention has already adopted an ordinance here by which they go too far in restricting the Alabama Legislature in enacting local laws; and I believe that we have committed a great mistake when we provided that the Legislature should enact a law and the Legislature should not be the judge of whether it was a local or general law, but that the courts should be the judge. I can see where many a hardship will come to parties who have vested rights under existing laws and afterwards those laws are declared unconstitutional by the courts of the country. I think one of the wisest decisions in Alabama is when the Supreme Court said that the Alabama Legislature was the judge as to whether its law was a local law or a general law.

MR. ROGERS (Sumter)—I rise to advocate the adoption of the substitute offered by the Chairman of the Committee on Local Legislation. It seems to me that this Convention in suppressing local laws have made a mistake that we are trying to do away with local legislation. If so, that is an error. The local laws of the State of Alabama are of far more importance to the citizens of Alabama than the general laws, upon the same principle that we are more interested in our Probate Judges than we are in the President of the United States. These large provisions, which every man recognizes, don't bear so directly upon the citizens. It has been asserted by the gentleman from Tallapoosa that it is

safer to trust the making of local laws to a hundred men of the Legislature and thirty-three men in the Senate, than it is to the local county board. Now, Mr. President, and gentlemen of the Convention, you all know that is not the question. You all know that under what they call Senatorial courtesy to please a member of the General Assembly, one man comes here, not 100 nor 133, but one man comes here representing his county, sitting in the Senate over yonder, and can absolutely put through or block any legislation affecting his county in the House. I speak from personal experience; and no argument can be made upon this question disputing the ability of local county boards to enact good legislation for a county, that does not reflect upon the people of that county. Who elects the members of the Legislature? The people of the county. Who elects the Board of County Revenues? The people of the County. I assert that the people of Alabama use more diligence in the selection of this Board than they do in selecting members coming to the Legislature of Alabama. Why? Because they have the vested rights of the county in their hands and they pass upon all matters that go before them; and in the expenditure of the peoples' money they are very careful. I know how it is with us, and I presume it is so everywhere else. When you have this local board in your county accessible to all the people of the county, you will never have any Columbiana or Calera business coming up before the Convention. That will stop hereafter and nothing of the kind will be possible. No secret sessions, no midnight passage of bills, no slipping bills through which are questionable because this board sits there confronting all the people, whether it be the Board of County Revenue or a board created by the Legislature of Alabama. Now, Mr. President, it seems to me that every argument is in favor of creating a local County Board rather than against it. Some gentleman has said it is the purpose to make laws easy to find. He imagines, I suppose, as a great many of them do, that we are making the laws of this State for the benefit of the lawyers of the State of Alabama. We are trying to pass laws for the benefit of the people of Alabama and I assert that in all counties the local laws are on record in books kept in the Probate office, just exactly like they are kept in the Capitol of the State of Alabama, and are as easy to find, whether passed by a local County Board or by the Legislature of Alabama.

MR. SANFORD (Montgomery)—Wouldn't it be the same almost to require deeds to be registered in Montgomery?

MR. ROGERS (Sumter)—The same proposition. Now, Mr. President, I don't know that I can add anything more to the argument in favor of this section. It seems to me that this section is absolutely essential. You know that you cannot pass any general law, with our great diversified interests in the State of Alabama which would work equitably upon all portions of the State.

MR. BULGER—Do you believe that the Legislature can pass laws covering every local question that could arise in the State?

MR. ROGERS—I am satisfied they could pass laws covering all local questions in the State; but whether it would be such a cover as would keep them warm in winter and cool in the summer, is something that I do not know, but I do know that laws in Walker County do not fit Sumter, and I know the people of Walker County know what they want better than the Legislature. And when these Boards are confronted with the people of their county, there will be no danger of such thing happening as took place before the General Assembly in reference to the Shelby County matter. And you will never have such an occurrence again as that in Alabama, if you will give to the local County Board the right to pass laws for the people. Of course, under the limitation of the Constitution of Alabama or under the limitations as suggested by my distinguished friend from Montgomery (Sanford) of the general laws of the State of Alabama. There can be no sensible argument urged against this proposition. Any man who would oppose it would oppose it upon the ground that his people have not got sense enough to select a wise Board to pass upon their matters, and that is the sum and substance of it. I would like to know if there are men sitting here in this Convention who think that their people have exhausted their senses in sending them here. Don't you suppose that they have got enough sense left to select men as good as you are? Why is it that these people can select such fine representatives to the Legislature and yet it is feared that they won't be able to select satisfactory County Boards to handle these matters?

MR. HARRISON (Lee)—I desire to move the suspension of the rules to introduce a short resolution.

The resolution was read as follows:

Resolution No. 241, by Mr. Harrison:

Resolved, That the privileges of the floor of this Convention be and the same are hereby extended to Hon. John D. Little, Speaker of the House of Representatives of the State of Georgia, and the Hon. B. S. Miller, a member of the House of Representatives of the State of Georgia, during their stay in the Capital of Alabama.

MR. SORRELL—I desire to discuss the amendment of the gentleman from Lauderdale, and to say that I cannot agree to that amendment, because of the fact among the many reasons that we are going out into an untried field. On yesterday we took from the Legislature of Alabama the power to enact local laws. We are brought today, having done that, face to face with the proposition as to what now is our remedy for the enactment of those local laws. I thought at the time that Section 1 was adopted that we were

making a mistake, in that we were going too far along the line of prohibiting local legislation. Have we forgotten the fact that although sir, that right may have been abused, although measures may have been passed for the benefit of individuals, and although the Shelby Court House may have been established, notwithstanding this fact, sir, shall we neglect to remember that under the law as it has existed, under the law that permitted local legislation to be enacted, that Alabama has grown and developed. We have invited capital into our fields that has found a safe and profitable investment. On yesterday we struck down the right of the Legislature to create local laws, and today find ourselves seeking a remedy and a forum in which to seek and obtain a local legislation. I submit, gentlemen of the Convention, that the proposition as submitted by the gentleman from Lauderdale is not the safeguard that they call it. Talk to me about holding out of this Convention that local boards in each county can create laws. It is not because of any reflection I would cast on the Board of County Commissioners or Board of Revenues, but I submit, sir, that it is the history of the hill counties in Alabama that the Boards of Revenues and County Commissioners are not made up of men that the people of the county look to create their laws. Sir, it is an experiment that is untried and I believe would be unwise. Whenever you delegate the authority of law-making power to a few men selected in a county, I submit that it is unwise, it is untried and the results cannot be foreseen. I respectfully submit that the proposition as presented by the gentleman from Montgomery is fair and more preferable than the one presented by the Committee. One special objection that I have to the amendment as offered by the gentleman from Lauderdale, is the fact that they provide in there that the Legislature may absolutely suspend the Board of County Commissioners, oust them and create officers of their own, the very thing that such a howl went up in Alabama four years ago along the line that the authority and the right of the Legislature to take from office men elected to these places and place it in the hands of politicians to appoint them. I submit that the provisions appended to that ordinance offered by the gentleman from Lauderdale are unwise and unsafe to be adopted by this Convention. Unsafe because you provide in it that the General Assembly may suspend these boards and create any board of equal jurisdiction, or a board with equal and other jurisdiction, leaving it absolutely to the Legislature to abolish these boards and abolish this law-making power that they have created and placing it into the hands of their friends and fellow politicians. I submit when you go out into these untried fields, having, as I said before, taken from the Legislature the power to create local laws, we now find ourselves wandering around to find a forum in which to make our local laws covering each county in the State. I am not here to criticise especially the action of this Convention on yesterday, be-

cause it is spoken by the majority vote and I humbly yield to that majority, but I do say to you that today in seeking a remedy to establish these local laws that it is one of the most important questions that this Convention has faced; and the proposition as reported by the Committee, and as advocated by the gentleman from Lauderdale, I submit, gentlemen of the Convention, is unsafe and **will not be for the best interest of Alabama to adopt it and let us find some remedy.** Let us find some other way that would meet the universal approval of the State of Alabama, that we might enact our local laws, or go back into the hands of the men that from the day Alabama went into Statehood has enacted her local laws and had the pleasure of standing and seeing our State grow and prosper. And if nothing better can be found go back to the old beaten paths and leave the question under the protection of the Legislature as we have one and all enjoyed it and hope again to receive the fruits that will come to Alabama in her prosperity and in her greatness.

MR. BLACKWELL—Mr. President, and gentlemen of the Convention: I am in sympathy, hearty sympathy, with the section offered by the Committee on Local Legislation. The gentleman who has just preceded me seems to have overlooked the great trouble we have had with local legislation and the necessity that exists for preventing the General Assembly from legislating on many local matters. He seems further, to have overlooked the fact that if you take away from the General Assembly this power, there must be some body located somewhere that can attend to some local legislation for the counties. Now, Mr. President, I think it was in 1896 or 1898 that I examined and counted the laws and there are 946 local laws, and 48 general laws. In other words, nineteen-twentieths of those laws are local in their nature.

Now, a legislative assembly costs the State of Alabama, as I am informed, about \$50,000 a session and the nineteen-twentieths taken by local legislation would cost \$47,500. So the local laws cost the State of Alabama anywhere from fifty to two hundred and fifty dollars each. We have said by these thirty-five excepted things that the legislature shall not hereafter enact laws on these subjects and who are we going to have to enact laws that the legislature cannot pass on? How would you provide general laws that would cover the necessities of each individual county of the sixty-six counties in Alabama? This seems to me to be a carefully guarded section. It provides that the local legislative power shall be vested in the court of county commissioners or in a board of revenue or some other tribunal established by the legislature of Alabama. Then, as a matter of fact, these are the parties who would know better what are the local needs of the county than any others, and it would be less expensive to have them enacted there than anywhere else. Now let me illustrate. A number of the last acts were to declare who should be liners between counties.

Now take such a bill. It is introduced. It is read three times and you have made the people of Alabama pay out about \$300 for declaring that man a liner. Suppose you confer that on the Board of County Commissioners, that they shall say who is a liner. Then the party who desires to be declared a liner goes before the Board of County Commissioners and they, having to pass on it only once, can act on it immediately and with little cost, and, if necessary, it could be fixed so that the man himself would have to pay the expense.

MR. OATES--Cannot the Commissioner's Court do that under existing law?

MR. BLACKWELL--It is not resorted to and I don't think it can be done. It has never been resorted to between the counties. It has between beats, but not between counties.

MR. DENT--Would not that be administration and not legislation?

MR. BLACKWELL--It confers upon them the powers, if they define that power now, and it is the power that is legislated upon now and that is called legislation when acted upon by the General Assembly, and there is no objection to calling its legislation, when acted upon by the Board of County Commissioners.

MR. DENT--I think that is the trouble. I would like to know what particular field of legislation you are going to confer on these courts. All of these matters referred to are matters of administration. The legislature provides the routine and they carry it into effect. And I want to know what particular field of legislation you want to confer upon these courts?

MR. BLACKWELL--Part of the duties generally acted on by the legislature and heretofore declared as special legislation, call it by what name you please, such as saying who are liners, and similar matters that have been referred to, stock law matters, matters pertaining to separate school districts and many questions of that character that you cannot legislate on now.

MR. SAMFORD--Would not the General Assembly, in passing general laws for the government of the whole State, with reference to these local matters, of necessity, place it in the hands of the courts of county commissioners or other courts as an administrative court rather than as a legislative court?

MR. BLACKWELL--I do not care what sort of a court you call it, whether administrative or legislative, and I have no objection to the legislature saying the character of subjects they shall take charge of. The legislature has had charge of these subjects and the courts have not exercised them. If they will designate these courts as courts to exercise authority over the sub-

ject in the general law, I have no objection. But we have taken it out of the hands of the General Assembly and I want to locate it in a proper court in the counties and it seems to me every argument is in favor of it, the saving of expense and as to many things now legislated for in a local way, it might be provided that the parties who obtain the local legislation should pay for it themselves. It may be that the matter is not in proper shape here exactly and that there should be some amendment fixing the number of days the court shall sit and the right of the probate court to call them in special session as the Governor has the right to call the legislature, and to fix the term that it shall remain in session and suggesting that they shall only pass on what is mentioned in the call, but with these safeguards I think that will be a proper tribunal to refer these subjects to.

MR. HOWZE. — I am satisfied the Convention is tired of speech-making, but I ask indulgence for a few words only on this subject. It seems to me that the original section as reported by the committee is preferable to the substitute offered by the gentleman this morning. I was at first inclined to favor the amendment offered by the gentleman from Greene, Judge Coleman, but upon reflection, I do not think it advisable for this Convention to adopt the suggestion of that amendment, in other words, I do not think it advisable for the Convention to put the Commissioner's Court so completely in the attitude of a legislature. Now, my view is that many of the things that are enacted into local laws from these different counties are matters and things which can be obtained from the different courts of the State as courts, under the general laws even as they now exist or as they could hereafter be framed, and that is not necessary for us as a Convention to lay so much stress upon the idea that we want the Commissioner's Court to act as the legislature, so I think it would be unwise for us to place into this Constitution a measure of that character particularly because many of these things that are asked for by the people of the counties should be paid for by the counties asking them as individuals or as corporations and not be a tax upon the people of the general county. If it is obtained in the commissioner's court, you can say how persons applying for these things should be required to pay for them, as they apply for them. If you put it in the nature of a legislative act, why then no county can possibly be called upon to pay the expenses of it, where the individual alone should be required to pay. I think the amendment would suggest to the commissioner's courts that they are a legislature or a branch of the legislature and that they are called upon to sit for thirty days every two years, and there is no necessity for that. Many of these things are matters which would require but a few moments' time to pass upon and enact. The present laws of the State provide ample time for the sitting of the Commissioners' Courts, not only for the things they are called upon to perform, but for what they will have to perform under

this Constitution if adopted. I do not think we should dignify the Commissioners' Courts with the title of the Legislature to the extent we would go in the amendment tacked on to the substitute, and I do not think the substitute ought to be adopted, because the original section is ample. The original section says:

Sec. 5. The General Assembly may, by general law, confer upon Courts of County Commissioners, Boards of Revenue or other courts, such power of local legislation and administration, touching all matters and things not provided for by general law, and not inconsistent with the provisions of this Constitution, as the General Assembly may, from time to time, deem expedient.

I would much prefer that the word "legislation" should be stricken out, but it may have a good purpose.

MR. WEATHERLY—Why is it that the amendment of the gentleman from Montgomery which gives the Legislature a free hand to provide for these matters would not be better than the original proposition of the committee?

MR. HOWZE—My answer to that is this: I think it more a matter of expediency than anything else. In this Article we have stricken out many things that cannot now be added under local legislation, and I think the Article as presented here will let the people see the fact that a provision is plainly set forth by which remedies can be had.

MR. WEATHERLY—Directory merely.

MR. HOWZE—Yes, but it is something that the people can see and will inform them that there is some provision by which they can get relief for what has been taken away from them. I do not think there is much difference between the two propositions. One is as good as the other. But I believe the people of the State when they see this in the Constitution will see that the Convention has attempted to put before them plainly where they may go to get relief for what they may consider themselves deprived of by taking away local legislation.

MR. OATES—Do you want any further information to the people than this: "The General Assembly shall itself, under general law, provide how local and private interests shall be provided for and protected?"

MR. HOWZE—I just answered that question virtually. I think they can get it there, and we point them in this Article directly where they may go, and we are instructing the Legislature now to authorize the tribunals to give the relief they want. That is a difference, though I don't think it amounts to a great deal, but I do insist it will be better for us to adopt the course suggested in my remarks, and I hope neither the substitute nor the



amendment will prevail, but that the Convention will adopt the section as originally reported by the committee.

MR. OATES—It seems to me this matter has been debated enough, and without any intention of cutting off anybody, I move the previous question on the section and all pending amendments.

A vote being taken, the main question was ordered.

THE PRESIDENT—The question is on the substitute of the gentleman from Lauderdale for the amendment proposed by the gentleman from Montgomery to the section as reported.

MR. O'NEAL—I ask unanimous consent to make an amendment to my substitute, simply changing grammar.

No objection was made, and the amendment was read as follows:

“Insert after the words ‘Judge of Probate’ the following: ‘Upon such notice as may be prescribed by the Legislature.’ Also strike out the words ‘and other’ after the words ‘with like’ and the last proviso of the substitute.”

MR. O'NEAL—The purpose of that amendment is to require notice to be given in the event the Probate Judge should call a session of the Board of Commissioners or the Board of Revenue or such other tribunal as may be created for the purpose of enacting special laws.

THE PRESIDENT PRO TEM. — The question is on the adoption of the substitute offered by the gentleman from Lauderdale.

MR. O'NEAL—I want to make a few remarks.

THE PRESIDENT PRO TEM.—The previous question has been ordered.

MR. O'NEAL—But I have a right to conclude the argument.

MR. DENT—I want to ask the gentleman a question. I have not heard any speaker who has advocated the clause under consideration draw the distinction I asked the gentleman from Morgan, that is, I am perfectly willing, speaking for myself, to confer upon the courts the power of administration over things upon which they have not acted heretofore, but I want to know exactly the field in which you are going to allow them to legislate. I suppose you have thought on that, and I want to know about it.

MR. O'NEAL—I will discuss that in my remarks.

Mr. President, there seems to be a general impression that the enactment of these provisions prohibiting the Legislature from

passing local laws upon certain subjects, strikes down the power to create local laws. That is not the purpose at all. The General Assembly still has the rights to pass local laws on all subjects, but it must not pass a local law on a subject which can be provided for by general law. The gentleman who was speaking a moment ago said that we have struck down the power of the Legislature to pass local laws. He has totally misapprehended the section. The gentleman from Tallapoosa said we will create sixty-five local Legislatures in the State. Don't we now create in every town in Alabama a Legislature. Is not the Board of Mayor and Aldermen in every town in Alabama vested with legislative powers? There is a charter from the Legislature limiting and defining their powers, and who can say that any great evil has arisen in Alabama from conferring upon Boards of Aldermen the power of local legislation? Then, if no evil has arisen in the city or town, why should evil arise in the county in conferring upon some other tribunal of like character power to legislate on small matters of local concern? The Commissioners' Courts ought to have some of those powers. The Supreme Court has decided that it is a court of quasi legislative powers. It is a court of roads and revenues, and all we ask is that you allow this court to exercise such powers of administration or legislation touching these small matters of local concern as the Legislature in its wisdom deems proper to vest in them.

Now it is not the purpose to give them any general powers of legislation. We have to put some confidence in the Legislature, and we have to assume that the Legislature is not going to abrogate its own powers and make Commissioners' Courts in every county.

MR. ROBINSON—Will these sub-Legislatures, or Commissioners' Courts, be bound by the limitations we put on the General Assembly?

MR. O'NEAL—Not at all.

MR. ROBINSON—They can legislate on any of these subjects?

MR. O'NEAL—They would be just like the Board of Mayor and Aldermen of a city. The Board of Mayor and Aldermen passes an ordinance—

MR. ROBINSON—We have provided that the General Assembly cannot pass any special law and certain other enumerated matters. Now can the Commissioners' Courts pass laws on those subjects?

MR. O'NEAL—If the Legislature vests them with the power.

MR. ROBINSON—Could they change the fees of Justices of the Peace in each beat?

MR. O'NEAL—No, sir.

MR. ROBINSON—Why not?

MR. O'NEAL—Because we enumerate a long list of matters in reference to which we forbid the Legislature from passing local laws.

MR. ROBINSON—And a stock law is one of them.

MR. O'NEAL—And we say in reference to those matters, they must pass general laws.

MR. ROBINSON—But the General Assembly is not bound by that.

MR. O'NEAL—Yes it is.

MR. ROBINSON—And would the courts take judicial notice of those acts of those county legislatures?

MR. O'NEAL—Let me finish answering one question before you ask another.

MR. ROBINSON—If you object to it, all right.

MR. O'NEAL—You will find this provision: "The General Assembly may by general law confer upon Courts of County Commissioners, Boards of Revenue or other courts, such powers of local legislation and administration, touching all matters and things not provided for by general law." Now the Legislature is required by general law as to all matters or things that they are prohibited from passing local legislation concerning. Therefore, the Commissioners' Court could not exercise any legislative power in any of those subjects. I hope the Convention understands that. Hence it could not confer on the Commissioners' Court power to deal with the fees of Justices of the Peace or stock districts, etc.

MR. SMITH, M. M.—Would it be necessary for each county to have an Attorney General to define what the law is for them?

MR. O'NEAL—We have Solicitors in every county already; and the same argument might be made against conferring on Boards of Aldermen any power of legislation. You may say that you are conferring on the Board of Aldermen of Decatur or Florence powers to legislate. Who is to determine their power? It is to be determined by their charter. The Supreme Court says here is your power, you can legislate on the subjects enumerated in this charter, and when you go beyond that charter, you violate the law, you have no power to do it and your legislation is void.

MR. WHITE—These local legislatures are restricted as I understand except on the subjects which are covered by general laws. Is that correct?

MR. O'NEAL—No, sir; I don't think you understand my position.

MR. WHITE—Won't the local legislatures have the whole field except where it is covered by general law?

MR. O'NEAL—Not at all. How is that question? I don't understand it.

MR. WHITE—Would not the local legislatures have entire control of all the field of legislation except that which is covered by a general law?

MR. O'NEAL—Certainly.

MR. WHITE—Then they have everything that is not covered by general law.

MR. O'NEAL—Here is what I want to say in reply to that. The act which creates these tribunals or the act which vests legislative power in these courts, defines the subjects on which they can legislate. Hence the Commissioners' Courts could not go beyond those subjects. Just like the charter of a municipal corporation defines the subjects upon which the Board of Aldermen can legislate, and when the Board of Aldermen goes beyond the power conferred or that might be inferred from the grant or specific powers, the action is not valid. Now this Article on Local Legislation enumerates a long list of local matters as to which the Legislature is prohibited from legislating and as to which the Legislature is required to pass general laws, and if the Legislature carries out the mandate of this article and prepares general laws on all these enumerated subjects, as to which they are prohibited from passing local laws, they could not confer upon Commissioners' Courts or courts of like jurisdiction, power to legislate on any matter enumerated herein, but on all other matters they could.

MR. WHITE—There will be sixty-six of these Legislatures?

MR. O'NEAL—Yes sir.

MR. WHITE—Five members in each House?

MR. O'NEAL—Yes, sir.

MR. WHITE—That would make 330 members?

MR. O'NEAL—They have them now.

MR. WHITE—We only have 100.

MR. O'NEAL — But you have the Commissioners' Courts now.

MR. WHITE—Then you give thirty-three days for legislative purposes which would make up an expenditure of \$35,000, besides the local bodies?

MR. O'NEAL—I have never made the calculation. But suppose it does cost \$50,000. My information is that every local act in these volumes cost from \$50 to \$150 each. I get that information from the Secretary of State.

MR. PETTUS—I want to ask a question which the gentleman from Lauderdale has partly answered. This Section is not self-executing. I want to ask if the Commissioners' Courts have authority to pass any local legislation except on matters especially delegated to them by the General Assembly?

MR. O'NEAL—Of course not. The General Assembly in vesting the bodies with legislative powers will define especially the extent of their powers and the subjects over which they can legislate.

The time of the gentleman here expired.

MR. CUNNINGHAM—Can I have unanimous consent to ask a question?

The consent was given.

MR. CUNNINGHAM—I would like to ask the Chairman of the Committee if this Section now pending is adopted, could the General Assembly authorize the Commissioners' Courts or such other tribunal as may be created to grant divorces or relieve any minor of the disabilities of non-age, or change the name of any corporation or corporate town?

MR. O'NEAL—No, sir; That is provided by general law or the relief sought can be given in a court. The last part of the Section says: The General Assembly shall pass general laws as to the cases enumerated in this section.

MR. CUNNINGHAM—The point I want to arrive at is this: Could the General Assembly, in passing a general law, delegate to the Commissioners' Courts the power to Legislate upon these thirty-five exceptions or on any of them?

MR. O'NEAL—On none of them, because on all enumerated subjects the General Assembly is required to provide general laws.

MR. CUNNINGHAM — But suppose one of those general laws were to delegate it to the Commissioners' Courts to pass on the granting of divorces or removing the disabilities of non-age.

MR. O'NEAL—Granting of divorces is already inhibited there and the removal of the disabilities of non-age.

MR. CUNNINGHAM—But what I want to know is, if we are transferring the authority from the General Assembly to legislate upon the questions here inhibited to the little sub-Legislatures created in the counties?

MR. O'NEAL—That is not the meaning of this provision, and if it is susceptible of such meaning, I am willing to amend it.

MR. CUNNINGHAM—Then I am willing to vote with you.

THE PRESIDENT—The question is upon the adoption of the substitute offered by the delegate from Lauderdale for Section 5, as reported by the committee.

A reading was called for, and the clerk read the substitute as follows:

The General Assembly may, by general law, confer upon courts of County Commissioners, Boards of Revenue or upon such other tribunal in each county as may be created by the General Assembly, such powers of local legislation and administration touching such matters and things which are not provided for by general law, and are not inconsistent with the provisions of this Constitution, as the General Assembly may, from time to time, deem expedient. Provided, such courts or tribunals shall not be authorized to exercise such powers of local legislation except during a term thereof held exclusively for that purpose, and that such term shall not extend beyond thirty days and shall not be held more than once in two years. But special terms of such courts for such purposes of not more than three days' duration may be authorized to be called at any time by the Judge of Probate upon such notice as may be prescribed by the Legislature necessary to consider one or more special subjects of local legislation, and, provided, further, that the General Assembly may abolish such boards or other tribunals and establish other courts or bodies with like powers in lieu thereof, when, in the discretion of the General Assembly it may be deemed to be for the best interests of any county.

A reading of the section for which the substitute was offered was called for and the minority report to Section 5 was read, being Section 5 of Article IV of the present Constitution.

THE PRESIDENT—The question is on the substitute of the gentleman from Lauderdale for Section 5 of the report of the Committee on Legislative Department, offered as an amendment to the report of the Committee on Local Legislation.

A vote being taken, the substitute was lost by a vote of 46 ayes to 70 noes on division.

THE PRESIDENT—The question recurs on the substitute of the Committee on Legislative Department for Section 5, reported by the Committee on Local Legislation.

A vote being taken, the substitute was adopted by a vote of 91 ayes and 20 noes on division.

MR. ROBINSON — I move the adoption of the section as amended.

THE PRESIDENT—The previous question has been ordered upon the section as reported and pending amendments, and the question is on the adoption of Section 5, as amended, and the ayes and noes have been called for, and the question is, is the call sustained?

The call was not sustained, and a vote being taken *viva voce*, the section was adopted.

Section 6 was read as follows:

Sec. 6. A general law within the meaning of this Article is a law which applies to the whole State; a local law is a law which applies to any political sub-division or sub-divisions of the State less than the whole—a special or private law within the meaning of this Article which applies to an individual, association or corporation.

MR. O'NEAL—In making the stenographic copy of the report, I left out two words which I ask unanimous consent to insert. Insert the words "is one" between the word "Article" and the word "which" in the fourth line.

By consent, the amendment was allowed.

MR. O'NEAL—I move the previous question of this sixth section.

MR. BOONE — Will the gentleman allow me to offer an amendment at end. The amendment simply provides that the courts can take judicial notice of any municipal law.

MR. O'NEAL—Can they not do that now?

MR. BOONE—No, they cannot; if those municipal laws are made private laws by this Constitution.

MR. O'NEAL—Would it be safe to allow the courts to take judicial notice of those municipal laws?

THE PRESIDENT — Does the gentleman yield for the amendment to be offered?

MR. O'NEAL—No, sir; I don't believe I do.

A vote being taken, the previous question was ordered, and a further vote being taken, Section 6 was adopted.

MR. WATTS—I want to offer an additional section.

THE PRESIDENT — There is a Section 7 offered by the committee, which the clerk will read.

Section 7 was read as follows: The General Assembly shall pass general laws under which local and private interests shall be provided for and protected.

MR. O'NEAL—That is just what we have adopted and we will withdraw that.

MR. HARRISON—I move to lay that on the table.

MR. O'NEAL—We ask leave to withdraw that section.

Unanimous leave was given and the section was withdrawn.

MR. BOONE—Now I ask leave to offer an additional section.

The section was read as follows: Section 7. The courts can take judicial notice of any municipal charter.

MR. BOONE—I do not suppose that it was the purpose of this Convention in abolishing a law that has been in existence ever since the case of Albritton vs. City of Huntsville, 60 Ala., that the Supreme Courts and all inferior courts would take judicial knowledge of municipal charters. That decision was also announced in the case of Barnes vs. Birmingham, 89 Ala., and unless this amendment is adopted in every case against a municipal corporation you would have to go to the trouble and expense under Section 6 making municipal charters private laws, of proving them as the Supreme Court has again and again decided that a private law must be proved like any other evidence in a case.

MR. O'NEAL—Will the gentleman allow me to ask a question?

MR. BOONE—Yes, sir.

MR. O'NEAL—Could not the legislature in the absence of that provision pass a law making private laws evidence in courts without further proof. Is not that purely a matter of legislative detail and ought that to be incorporated in the Constitution? Is it not simply a rule of evidence? You say that the private acts of a municipality shall be received in courts without further evidence?

MR. BOONE—Yes, sir.

MR. O'NEAL—That is a rule of evidence?

MR. BOONE—Yes, sir.

MR. O'NEAL—Is not the power of the legislature to establish rules as to this matter unlimited?

MR. BOONE—I do not know whether it would be under this subdivision or not. If you provide that it is a private law and



thereby change the laws of evidence in this State, it seems to me that all those matters would have to be proved as any other matter of evidence. The minute this Constitution is put into effect it holds that it is a private law and being a private law it must be proved; and from the time this Constitution is ratified and that law or rule of evidence is stricken down it would be a question whether the legislature could change it or not. But assuming it could change it, it could not be made effective until a meeting of the General Assembly to pass it. I ask the Chairman of the Committee to allow this to be put in and not abolish the salutary rule in the interest of people and cutting down expenses of municipal corporations in defending suits and also limiting the expenses of plaintiff's bringing suits against municipalities where it would be necessary to copy in, at expense, long charters. The charters of the city of Montgomery and of Mobile make hundreds of pages and I do not see any necessity for copying them in and I do not see why it should not be provided that the courts should take notice of such matter.

MR. O'NEAL—The only objection I have is that the legislature can in their discretion provide any rules of evidence they may see proper. They can, by general law, provide that any private law passed by any municipality in the State shall be received in the courts without further proof. I am willing that this question be referred to the Judiciary Committee and if they say it cannot be provided for by the legislature, I am willing to let it come in here.

MR. BOONE—No, I prefer to take a vote now.

MR. O'NEAL—Then I move to lay the additional section on the table.

A vote being taken the amendment was tabled.

MR. WATTS—I offer an additional section.

The amendment was read as follows: Amend the report of the Committee on Local Legislation by adding an additional section, to be known as Section 7 as follows:

Sec. 7. No bill introduced as a general law into either House of the General Assembly shall be so amended in its passage as to become a special, private or local law.

MR. WATTS—That, Mr. Chairman, is simply to provide for one omission in the Article on Local Legislation, to provide for amendments, so that a bill could not be introduced as a general law and then amended in its passage, so as to become a local law.

MR. deGRAFFENREID—Have we not already adopted that.

MR. WATTS—No, sir. I move the previous question.

MR. LONG (Walker)—A point of order. That is an entirely different ordinance, and entirely different section and it has to be referred and read three times before it can be adopted. It is very dangerous to pass ordinances that have not been referred to a Committee, or printed, in direct violation of the rules. That is the point of order I make.

THE PRESIDENT—It seems to the chair that a Committee may amend its report, or any delegate may move to amend the report of the Committee, by changing any section, or to add additional sections, and the point of order will be overruled.

Upon a vote being taken, the main question was ordered.

MR. O'NEAL—(Lauderdale)—I move that the entire article on Local Legislation be engrossed, and ordered to a third reading.

MR. WILLIAMS (Marengo) — I have a little amendment, that I do not think the gentleman will object to. Just read it, and if he objects I will withdraw it.

The amendment was read: Amend by adding Section 8 to this article: nothing contained in this article shall effect dispensaries or schools now having rights.

MR. WATTS—I move to lay it on the table.

MR. WILLIAMS (Marengo) — I ask unanimous leave to withdraw it, then.

The leave was granted.

MR. O'NEAL—I now renew my motion that the article be engrossed and ordered to a third reading.

MR. VAUGHN—Does that cut off the report from all further amendment?

MR. O'NEAL—No, sir; after the Committee on Harmony reports you can amend it.

THE PRESIDENT—It seems to the chair after it is ordered to a third reading it is not open to amendment.

The next order will be the consideration of the report of the Committee on State and County Boundaries.

MR. WATTS—I rise to a point of inquiry.

THE PRESIDENT—The gentleman will state the point of inquiry.

MR. WATTS—Does it not require on this ordinance that the ayes and noes shall be called upon its passage?

THE PRESIDENT—That will be necessary on the third reading.

MR. COBB—It is now very nearly time for adjournment and before we go to another article, I move we adjourn.

MR. JENKINS I ask the gentleman to withdraw that motion.

MR. COBB—I will yield to the gentleman.

MR. JENKINS—I desire to ask leave to send up this petition, and to have it printed, in the official report.

Objection was made.

MR. JENKINS—I move that the rules be suspended, and that this petition be printed in the proceedings. It is from a respectable colored citizen of the State.

Upon a vote being taken the rules were suspended, and the petition is as follows:

Snow Hill, Ala., July 5, 1901.

To the Hon. John B. Knox, President, and Honorable Gentlemen of the  
Constitutional Convention of the State of Alabama:

Gentlemen—Presuming that you have laid the report of the Suffrage Committee on the table for a few days in order that the citizenship of the State may have an opportunity to express an opinion on the subject, I beg you to lend an ear to the following, which is not intended so much as a discussion or opinion, as it is an humble petition:

Of the many grave and intricate questions which you are called upon to solve, perhaps none will engage more of your attention than that of the suffrage; certainly none is fraught with more difficulty, and danger of miscarriage. This is not strange in the light of history, for every nation known to history has had to deal rigidly with the question of suffrage at some time before it measured up to the world's standard in political affairs. It is therefore, that the true citizen of Alabama finds himself in deep sympathy with the members of the Convention, many, perhaps all, of whom are sincerely trying to find a way out of the darkness created by unlimited suffrage, and a consequent appalling number of ignorant voters at every election, and the election too often, of unworthy, unscrupulous, and sometimes corrupt men to offices to which nothing but men of the highest integrity and the purest patriotism should be elected.

There is a public sentiment in the South today which decrees that the ignorant negro must be disfranchised, and however the young and intelligent negro may regret to see his ignorant father deprived of the right which came to him by virtue of the course of events, he must nevertheless recognize the necessity of some sort of reform which will tend to the purification of our politics. But he may be pardoned if he contend that whatever touches one element of our population ought to touch all under similar conditions. Not one of you will gainsay or even doubt the truth of the statement that

ignorance, immorality, and unworthiness should be taken out of the South's politics, whether it be the result of negro suffrage, Pole suffrage, or even white suffrage. One cannot read the report of your Suffrage Committee without sharing with them the great burden which they had to carry. Every word of it shows arduous labor on the part of the Committee. Nevertheless, it will not be strange if your honorable body do not accept the entire report as the panacea for all of Alabama's political ills, and finally stamp it or any part of it with your disapproval. Already some of the recognized leaders in our political affairs have published to the world their disapproval of the "grandfather clause," which allows young white men to vote because their fathers fought in certain wars and excludes negroes.

One can scarcely think that Alabama will, with a grandfather clause, follow the lead of other States which have not bettered themselves by the same. It will not be strange if intelligent men everywhere consider the grandfather clause unfair, unprogressive and a bar to the highest development of both races. If young white men throughout the State do not resent what would seem to place a premium upon ignorance for them and a premium upon intelligence for negroes, I am mistaken in my estimation of their race pride. If the poor and unfortunate class of white people do not resent the grandfather clause, and consider it a virtual acknowledgment of their inability to compete with the recently emancipated slaves, I am very much mistaken in their manhood.

Besides, gentlemen, if I may be permitted to ask a question, if the right to vote can come to any man by inheritance, can this right be confined alone to the battlefield? Must it be confined to the actual bearing of arms any more than to the other and higher duties, or as for that matter, the most menial task performed in time of war for the propagation of the same? Although Alexander Stephens and a thousand of his compatriots may never have fought a battle, or may not have borne arms in our civil war, what man of you would deprive the remotest of their descendants of the privilege of voting? Three millions of my race dug trenches, fed your mules, guarded your homes, and cultivated your lands that you might have subsistence while you struggled four long years with your brethren of the North; and though they did not actually bear arms, like many others who rendered valuable service to the Confederate cause, they did you a service without which you could not have waged the war so successfully for such a time; yet under the grandfather clause you leave them out while thousands of others with no better qualifications, who never fought nor supported those who did fight, will be enfranchised. But if we may leave the white man out of the account for a moment, and take the grandfather clause at its face value, I beg to advance the opinion that the Southern negroes who have advanced far enough in the arts of civilization to think for themselves, will learn to doubt your gratitude and to distrust your sense of justice if by this clause you permit six thousand negroes who enlisted in the Confederate cause, and their descendants, the privilege of suffrage while you exclude three million others who did not enlist, but who served you at your homes, and without whose service the war could not have been carried on.

If you pass a law permitting the descendants of white school teachers to teach in the public schools regardless of other qualifications, and requiring all negroes whose fathers did not teach, to be examined rigidly for that privilege, verily it would not be more disastrous to the white race in the end than would the grandfather clause reported by your committee.

I sincerely believe that if you lay down a law which will operate in favor of the white man because of his ancestry, and operate against the negro because of previous conditions over which he did not and could not have any control, it will be a great step backwards, for it seems to me that if we allow heredity to enter too largely into our politics we drift away from the basic principles of our institutions.

If Alabama incorporates in her organic law a grandfather clause, being a leading State as she is, some other less scrupulous State may take the matter further and by similar statutes prevent the negro from operating certain machinery, and perchance deprive him finally of working at certain gainful occupations. If you establish this as a principle and follow it up there is not telling where we will find ourselves in the end. The South which has stood so long as the champion of the rights of the less fortunate people to labor at gainful trades and professions cannot afford to take any step backward. Since the close of the Civil War Alabama has made great progress. It is left largely with you, gentleman, to say whether or not this progress shall continue. If you deal roughly with the negro in the matter of suffrage he may lose that sunshine which has for centuries characterized the race, and made him so valuable a counteraction for the austere white man, and become a disgruntled element in our population. On the other hand if you inaugurate laws that will operate with equal justice, he will learn to love you more than ever for your kindness, to respect you more than ever for your integrity, and will resolve to help you to push forward the interests of the grand State to which he forms a part. Any legislation which will tend to create a gulf between the races, to create the spirit of absolutism on the one hand and the spirit of distrust on the other, to disturb the tranquility of either race will be greatly detrimental to both.

Finally, gentlemen, we humbly beg you to remember that though we were forced here against our will, we have learned to love the land of our adoption; and if you of the dominant race will be generous in your dealings with us, generous in the matter of education, you will have at your door a people who will render you a service in the development of your State that cannot be rendered by any other people, a people who will not trouble your sleep with dynamite nor your waking hours with strikes. This is the people that appeal to you today to make a suffrage law (though the test be the severest that is consistent with reason) that will operate for all men alike. We could not ask less, but for this we contend as just and right.

Yours very respectfully,

Wm. H. T. Holtzclaw.

Leaves of absence were granted Mr. Graham (Talladega) for Saturday and Monday; Mr. Fitts for today and tomorrow; Mr. Miller of Wilcox for tomorrow and Monday.

MR. OATES—I rise to a parliamentary inquiry. I desire the date announced that the report of the Committee on State and County Boundaries was reported. What was the date on which it was reported?

THE PRESIDENT—June 25.

MR. OATES—Does not the report of the Committee on Banks and Banking precede that; it is marked the 24th?

THE PRESIDENT—The Committee on Banks and Banking reported before the Committee on State and County Boundaries, but the report of that committee was not made a special order while the other report was.

MR. COBB—I move we adjourn.

The motion was carried and the Convention adjourned until 3:30 p. m.

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#### AFTERNOON SESSION

The Convention reconvened at 3:30 o'clock p.m. and upon the call of the roll 106 delegates responded to their names.

Leaves of absence were granted as follows: Mr. Harrison for tomorrow; Mr. Jackson of Lee, for Saturday and Monday; Mr. Renfro for today and Saturday; Mr. Macdonald for this afternoon; Mr. Sloan for Saturday and Monday; Mr. Weatherly for this afternoon; Mr. Morrisette indefinite leave of absence on account of sickness in his family.

THE PRESIDENT—The next order will be the consideration of the report of the Committee on State and County Boundaries.

MR. CORNWELL—I have a substitute to that I desire to offer.

MR. PARKER (Cullman)—The substitute would be out of order.

THE PRESIDENT—Does the gentleman desire to offer a substitute for the entire report?

MR. CORNWELL—Yes sir.

MR. PARKER—There are three minority reports. The substitute would be out of order now.

**THE PRESIDENT**—As the Chair recollects the rule, it requires the consideration of these reports Section by Section, and the gentleman will be in order to offer his substitute to each Section as it is called.

**MR. CORNWELL**—My substitute could not possibly come as a substitute to each Section. The difference is so radical that unless to the entire report it could not be offered as a substitute for each Section. I do not see anything in the rules bearing on that particular question.

**THE PRESIDENT**—The Chair will examine the question and rule upon the point of order in a moment.

**MR. BLACKWELL**—Under the rule, reports were to be considered Section by Section, and amendments were only allowable when the Section was reached to which the amendments applied. The custom in the Congress of the United States is that a committee makes a report, and the minority reports are considered and disposed of before anybody else is allowed to offer an amendment or substitute, so the Committee might perfect its article.

**MR. OATES**—I think my friend, the gentleman from Morgan, stated the rule a little too broadly, that is true where they substitute a minority for a majority report, but where it applies to a Section, that does not apply.

**THE PRESIDENT**—The proposition that the Chair has under consideration is a motion by the gentleman from Jefferson to offer a substitute for the entire article prepared by the Committee.

**MR. OATES**—Replying merely to the statement of the delegate from Morgan, he said the fundamental rule in Congress wherever there is a minority report it must be disposed of before any other amendment is in order. That is entirely true where the minority report is substituted for the majority, but where it relates only to one Section, that is not in order until that Section is reached.

**THE PRESIDENT**—The gentleman from Montgomery is not speaking to the exact question. The question now under consideration upon which the Chair would be glad to be advised by members who are familiar with parliamentary practice is this: The Committee on State and County Boundaries has submitted a report which is up for consideration. The motion of the gentleman from Jefferson is to offer a substitute for the entire Article. We have a rule that these Articles are to be taken up and considered Section by Section.

**MR. OATES**—I stand corrected. I did not hear the first part of it.

MR. HARRISON—We have no rule on that subject, but in the first report brought in the Chairman of the Committee moved to consider that report Section by Section, and that course has been followed. I have no recollection, I suppose the Chair has examined, but I don't think we have any rule on the subject, but are governed by the action of the Chairman of the Committee in making the report to be considered Section by Section.

MR. OATES—Unless there is a rule that directs otherwise, under the general parliamentary law, it is competent to offer a substitute for the whole report.

THE PRESIDENT—Then what would become of the minority reports to amend a particular Section? There are minority reports here directed to particular paragraphs or sections of this majority report. Now Rule 51 reads: "When an ordinance or article is reported to the Convention and a minority report accompanies the majority report, the ordinance or article accompanying the minority report shall be considered an amendment, and the same shall be printed and the ordinance or article shall be read a second time; and said ordinance or article and minority report shall be placed on the Calendar and be considered on the third reading of the ordinance or article."

MR. SAMFORD (Pike)—It occurs to me in that connection that the same rule would apply to the whole report as would apply to any section that was being considered section by section. The committee proposed an entire report, the minority of the committee proposes an amendment to the majority report or the report of the committee, and the gentleman from Jefferson proposes a substitute for the entire report. That being the case, it would be proper, it seems to me, for the Convention to consider, first, the substitute, then the amendment, and then the report under our rules.

MR. HARRISON—I submit in the absence of a rule, the general parliamentary law applies. There was a minority report. The majority have a right to perfect their report so the Convention could judge between that report perfected and the minority report.

MR. ROGERS (Sumter)—What would become of the substitute?

MR. HARRISON—After the original report has been acted upon, that will be acted upon.

MR. ROGERS—If the majority report is perfected, as he says, there would be no necessity for a substitute.

THE PRESIDENT—The general parliamentary rule is that the friends of the measure have a right to perfect it by amendment before substitutes for the entire Article would be in order.



MR. OATES—I rise for the purpose of concurring in the statement of the gentleman from Lee with this exception, it is owing to the nature of the amendment pending by way of minority report. Suppose it is in hostility to the majority report; it could not be said a perfect measure, and it is only where it offers an amendment to a portion of it, to a part, and that is for the presiding officer to decide, whether it goes to the whole or not. If only to a portion of it, I concur with him; if not, then a substitute for the whole thing would be in order.

MR. COBB—It does seem to me that there is no possible difficulty in this matter. As stated by the chair, it is a universal proposition of parliamentary law that the friends of the measure have the right first to perfect it before anything is allowed to attack it—especially when that comes from the committee of the body. Now, in order to perfect this matter, you have to dispose of the original report and the amendments to that original report. All must be disposed of before the measure can be said to be perfected, and my friend from Montgomery is entirely wrong when he asserts the proposition that there is anything to the contrary. I do not care whether it goes to any part or not. It is a part of the report of the committee having this in hand. You first consider the majority report, then you take up the minority report and see what you will do with them, accept them or reject them, and whenever you have accepted or rejected them, then there is before this body a perfected report of this committee, and then it is open to attack by anybody, either in sections or as a whole. Until it is perfected, these other motions, whether addressed to sections or to the whole, are out of order.

MR. HOWELL—I rise to a question of parliamentary inquiry.

THE PRESIDENT—The gentleman will state his parliamentary inquiry.

MR. HOWELL—Does a minority report of a committee to a majority report stand the same relation as an amendment to the main question?

THE PRESIDENT—Minority reports are treated as amendments.

MR. HOWELL—Is it not in order, if that be the case, to entertain the introduction of a substitute for both the main question and the amendment?

THE PRESIDENT—Minority reports relate to amendments to particular sections only. Does the gentleman from Jefferson desire to be heard further on the point of order?

MR. CORNWELL—I don't see how this substitute I am offering can come in and be considered section by section when

we are considering the committee's report; we take the committee's report, and there are two of them. in fact, there are three, but one especially readopts the present Article of our Constitution. Suppose the Convention should adopt that, what do you suppose would be done with the majority report then? You have covered the entire ground that the committee is supposed to look after; then my substitute has no place in the Convention. It would be no good. On the other hand, to offer a substitute after the report has been adopted by this Committee, what grounds would I have then to introduce it? This minority report is entirely different from the majority report, because the minority report covers the entire article and there is nothing left, yet it is signed by two men recommending the adoption of the present article in the present Constitution. If you adopt the majority report, then what will become of this minority report recommendation, and if you adopt either one or the other, what becomes of the substitute? The Convention ought to have the right to consider that substitute, it strikes me, before either one, otherwise the substitute is of no force or effect.

MR. WHITE—This thought occurs to me, not being a parliamentarian, but as suggested by some, that the Committee has the right to go on and perfect its measure.

THE PRESIDENT—That is undoubtedly the rule.

MR. WHITE—If that is true, where is the reason for going on and perfecting a measure which may be displaced for a substitute?

THE PRESIDENT—The substitute is offered because the party who offers it supposes the measure is imperfect and needs improvement by the adoption of the substitute. The friends of the measure, before that question is tested, have the right to perfect their measure by amendment.

MR. WHITE—Then, when would the substitute be in order?

THE PRESIDENT—As soon as the friends of the measure have perfected it by amendment.

MR. WHITE—When will we know that?

THE PRESIDENT—You will know that as soon as they cease to offer amendments.

MR. WHITE—It seems to me that with this, like everything else, that the substitute ought to be considered first.

MR. ROGERS (Sumter)—Going upon the ground that the friends of the measure have the right to perfect their measure and adopt this report section by section, before any substitute can be offered, I think it would be necessary to reconsider it after that is done before you could get it in. It seems to me clear when the section is adopted you would have to move a reconsideration of

the vote by which the section was adopted before you could offer a substitute. It would be necessary to take the steps backward one at a time and reconsider, and then every Section of the report would have to be re-considered before you could offer a substitute for it. It seems to me that is clear.

**THE PRESIDENT**—There is a minority report which covers the entire article, the gentleman says.

**MR. PARKER (Cullman)**—The gentleman is incorrect in that statement. It does not cover the first section or the fifth or sixth section of the article.

**THE PRESIDENT**—The Chairman of the Committee states that the gentleman is mistaken in saying that the minority report covers the entire article as reported.

**MR. BLACKWELL**—I rise to make a further point of order, that there is really nothing before the House to offer a substitute for. It was simply stated that the next thing in order was the consideration of the report and it has not been offered by the Chairman of the Committee, nor has the Chairman been heard.

**THE PRESIDENT**—In the opinion of the Chair, in view of the condition of this article, the fact that there is a minority report affecting most of the sections and that there is a substitute which the gentleman from Jefferson desires to offer to the entire report, it will be proper to take the article up section by section when it shall be open for amendment before the sections are adopted, as amended, and before the sections are adopted as amended, it will then be open to proposition of a substitute for the entire article, and no reconsideration will be necessary. The Secretary will read the first section.

**MR. PARKER**—I believe the Chairman has the right to explain the article.

**THE PRESIDENT**—There is no rule that I have been able to find which requires an article to be taken section by section. The gentleman may make his statement to the Convention.

**MR. PARKER**—In presenting this article of the Constitution to the Convention, the Chairman has no speech to make. I will simply content myself by saying that the Committee has carefully and patiently discharged their obligation and duty in accordance with our best judgment; and the result of its labors, is now the property of this Convention to do with as to the Convention seems best. I now move that we take up this article section by section, and if there are any amendments to the sections, they can be made as the sections are considered.

**MR. PROCTOR**—I make the point of order that is already the rule of the House.

MR. deGRAFFENREID—That was the rule adopted under the suspension of the rules when we took up the report of the Committee on Executive Department.

THE PRESIDENT—The records do not seem to bear the gentleman out. That was confined to that particular article. The motion is that the Article be taken up Section by Section.

And a vote being taken, the motion was carried.

THE PRESIDENT—The Chair will state that the gentleman from Jefferson will not be cut off from offering his article as a substitute at the proper time and before the Article is adopted.

MR. CORNWELL—I will attempt to get the proper changes by amending the Sections as they come up.

The Clerk then read the following:

An Ordinance to create and define the State and County Boundaries, and to regulate the location of county sites, and the formation of new counties.

Be it ordained by the people of Alabama in Convention assembled, That Article II. of the Constitution be stricken out, and the following Article inserted in lieu thereof:

## ARTICLE II.

State and County Boundaries, County Sites and New Counties.

Section 1. The Boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the 31st degree of North Latitude crosses the Perdido River; thence East, to the Western Boundary Line of the State of Georgia; thence along said line to the Southern boundary line of the State of Tennessee, thence west along the Southern boundary of the State of Tennessee, crossing the Tennessee River, and on to the second intersection of said river by said line, thence up said river to the mouth of Big Bear Creek; thence by a direct line to the northwest corner of Washington County, in this State, as originally formed; thence southerly along the line of the State of Mississippi to the Gulf of Mexico, thence eastwardly, including all islands within six leagues of the shore to the Perdido River; thence up said river to the beginning; Provided, That the limits and jurisdiction of this State shall extend to and include any other land and territory now acquired, or hereafter acquired, by contract or agreement with other States or otherwise, although such land and territory are not included within the boundaries hereinbefore designated.

MR. PARKER—The only change made in this Section is the proviso, "Provided, That the limits and jurisdiction of this State shall extend to and include any other land and territory now ac-

quired, or hereafter acquired, by contract or agreement with other States or otherwise, although such land and territory are not included within the boundaies hereinbefore designated." This was added for the purpose if there should be any addition from the State of Florida, such addition would be within the jurisdiction of this State. I move the adoption of the Section.

THE PRESIDENT—Unless some amendment is offered, the Convention will pass to the next Section. The Chair does not think it proper to adopt the Section in view of the proposition to offer a substitute. The Convention is now considering this report for the purpose of hearing such amendments as may be offered.

MR. DENT—I would like to suggest a verbal amendment. I would say "now held" instead of "now acquired."

MR. PARKER—we don't know just when this Constitution will be adopted. We are not particular, however, about the phraseology, and if you want it we have no objection.

THE PRESIDENT—The Clerk will read the next Section unless the gentleman wants to offer the amendment.

MR. DENT—I offer that amendment.

THE PRESIDENT—Send up that amendment in writing.

MR. DENT—I don't care enough about it to write it. Let them pass on.

The Clerk then read Section 2 as follows:

Sec. 2. The boundaries of the several counties of this State as they now exist are hereby ratified and confirmed.

MR. PARKER—That is substantially the same as the old Constitution.

MR. CORNWELL—I desire to offer a substitute for that section.

MR. SAMFORD—In view of the fact that the gentleman from Jefferson has stated to the Chair that he would not offer his substitute for this article, but would attempt to get his changes by amendment, it appears to me that it would be better to adopt these sections as we go along.

MR. CORNWELL—I will attempt to get in by amendment, the changes I desire.

THE PRESIDENT—We were simply pursuing this course in order not to cut off the gentleman.

MR. PARKER—I move to adopt Section 1.

And upon a vote being taken the section was adopted.

MR. PARKER—I move to adopt Section 2.

THE PRESIDENT—It is moved that Section 2 be adopted.

MR. CORNWELL—I have sent an amendment up to that section.

The amendment was read as follows:

“Until changed by the General Assembly as allowed by this Constitution, the boundaries of the several counties of this State as heretofore established by law, are hereby ratified and confirmed. And no new county hereafter formed shall contain less than 18,000 inhabitants, nor shall it have less assessed taxable property than two millions, as shown by the last tax returns, nor shall it contain a less area than 400 square miles; and it shall be entitled to one or more representatives under the ratio of representation existing at the time of its formation.”

MR. CORNWELL—You will notice as to that substitute, or amendment, whichever you choose to call it, that there are other sections in this article that deal more or less with the same matter; and if necessary I will have to offer another substitute along the same line as embodied in that amendment. We all recognize the fact that Alabama, when it was first organized, had 23 counties. Today we have 66. Our constitutional area for a county is now 600 square miles. I propose to reduce it to 400; but for information of the Convention I will state that further on I propose to offer a section, limiting the counties left to 600. That is, you can establish a new county, provided it has 400 square miles and so much taxable wealth. If you take into consideration what other States are doing, benefits to be derived from small counties in the way of education, the benefits of brushing up against each other, the benefits to our country friends on account of better roads and local home government, which we all believe in, it will give our people opportunities they have not enjoyed heretofore.

MR. deGRAFFENREID—I move to lay the amendment of the gentleman on the table.

The yeas and nays were called for by the delegate from Cleburne (Mr. Howell.) The call was withdrawn and was then renewed by the delegate from Sumter (Rogers), but the call was not sustained. And a vote being taken on a division the motion to table prevailed by 69 ayes and 21 noes.

MR. PARKER—I move the adoption of Section 2.

MR. HARRISON—Under the ruling of the Chair, were not amendments only to be considered and then opportunity given for the substitute to be considered?

MR. PRESIDENT—The Chair proceeded under that rule, but the gentleman from Jefferson announced that he would prefer to offer his amendments to each section as read.

MR. MOODY—There is a minority report embracing Sections 2 and 3.

THE PRESIDENT—The Secretary will read the minority report.

THE CLERK—The minority report does not embrace Section 2.

MR. PRESIDENT—The Clerk informs me that the minority report does not affect Section 2.

MR. FOSTER—I think the Secretary is mistaken.

The Clerk found the minority report referred to and it was read as follows:

The undersigned member of the Committee on State and County Boundaries does not concur in the report of the Committee as to Sections 2, 3 and 4, and he offers as substitute therefor the following:

Sec. 3. The boundaries of the several counties of this State as heretofore established by law, are hereby ratified and confirmed. The General Assembly may by a vote of two-thirds of both houses thereof arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new counties shall be hereafter formed of less extent than six hundred square miles and no existing county shall be reduced to less than six hundred square miles; and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its foundation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation. Respectfully submitted.

Milo Moody,

C. H. Miller.

MR. ROBINSON—I want to offer a substitute.

MR. BLACKWELL—I make the point of order that there is but one section before the House.

THE PRESIDENT—The chair will rule if the committee desires to perfect that section it will have the opportunity to do so; and also to perfect three and four.

MR. COBB—I move the minority report be laid on the table so far as it affects Section 2. It is in the identical words.

MR. PRESIDENT—It seems to the chair pursuing the same ruling that the chair announced awhile ago, that we will pass over Sections 2 and 3, and then 4, and give the friends of the measure an opportunity to perfect each section. Then the minority report will be in order, as it relates to all three sections. So, as there is no amendment to Section 2, the secretary will read Section 3.

Section 3 was read as follows :

Sec. 3. The General Assembly shall have power, provided that each house, by a majority of the members elected thereto, shall vote in favor thereof, to submit to a vote of the people residing within the territory proposed to be taken from one county and given to another, a change or alteration in county lines, but no such change or alteration shall be made unless such proposed change or alteration shall receive two-thirds of the votes of the qualified electors voting at such election, and provided, that no county line shall be changed or altered so as to reduce any old county below 500 square miles or which shall reduce the inhabitants in any such county below the number of inhabitants to entitle the county to one representative.

THE CLERK—To which there are two minority reports; the one just read, which was signed by Messrs. Moody and Miller, and the other of which is as follows :

We therefore move to amend the report by striking out "five hundred" where it occurs in Section 3, and adding in lieu thereof the word "six hundred." Respectfully submitted,

J. E. Cobb,

John H. Parker,

E. C. Jackson.

MR. HOWELL—I have an amendment to Section 3.

MR. SAMFORD (Pike)—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. SAMFORD (Pike)—The chair held a half minute ago that a minority had the same relation to the majority report as an amendment. That being the case, there are two minority reports, and that would be an amendment to an amendment and no more amendments can be offered until we can get rid of some of the amendments now before us.

THE PRESIDENT—One of the amendments offered by the minority relates only to one section.



MR. PARKER (Cullman)—Yes.

THE PRESIDENT—It seems to the chair that where one of the minority reports relate to the three sections, the other to one, the rule suggested by the gentleman does not apply, but the Convention will first consider the minority report which is confined by its terms to one section with a view of allowing the friends of the measure to perfect that section before the other substitute is considered, which relates to the three sections.

MR. HOWELL—The chair will not entertain my amendment, then, until that is considered?

THE PRESIDENT—The minority report will be considered, and then the gentleman will have an opportunity of offering his amendment. The chair will suggest that the gentleman from Chambers withdraw his amendment. The secretary will read the minority report which relates to Section 3 alone.

This was done, and the amendment of the delegate from Cleburne was read as follows:

Amend Section 3, Article 2, by striking out the words "five hundred" where they occur and inserting in lieu thereof "four hundred."

THE PRESIDENT—It seems to the chair the amendment of the gentleman should relate to the amendment.

MR. HOWELL—I ask unanimous consent to withdraw the amendment, then, and to offer it at the proper time.

THE PRESIDENT—It can come in now by striking out "six hundred" in the minority report and inserting "four hundred."

The change suggested by the President by unanimous consent was allowed, and the amendment was then read as follows: "Amend the amendment, the minority report, by striking out the words 'six hundred' where they occur and inserting in lieu thereof 'four hundred.'"

MR. O'NEAL—What becomes of the minority report signed by Messrs. Moody and Miller?

THE PRESIDENT—That relates to the third section and it will be taken up as soon as the third section is reached.

MR. HOWELL—I asked to be allowed to give a few reasons for offering that amendment.

I appreciate the fact that we will lead a forlorn hope from the expressions already had on this subject, but we have some reasons, and, to our minds, very plausible reasons, why the constitutional area of counties should be reduced to 400 square miles.

In the organization of this State in 1819 in consequence of the sparsely settled condition of the country, it took 900 square miles to make a county. Possibly that was well enough in that day. Thirty-six years after that when the State had settled up and there was a demand and a reason for it, the Constitutional Convention of 1865 reduced it from 900 to 600 under which a number of new counties were organized in Alabama. Waste places were built up and people were situated much more conveniently at their county towns than they had been before. Thirty-six years have come and gone since that and if there was a reason for the reduction of the area of counties in 1865 the reason is stronger now why the constitutional area should be still further reduced. I have no personal interest in the formation of any new county, because situated where my home is, it would be impossible for the creation of a new county to put me any nearer the Court House than I am at present and I have no pique or ill-will against any town so that I have no interest in the formation of counties. I am too old to desire any office, and it occurs to me in framing this organic law that we hope will be the organic law for years to come, and in the rapid increase of the population and the development of our great State, are we prepared to say in all the years to come there shall be no county less than 600 square miles? There is to my mind a number of reasons for this measure. I appreciate the fact that the county towns, the Court House towns of Alabama as a rule are opposed to it because they are situated conveniently to the Court House and are put at no disadvantage in attending courts and going to the town and they feel like everybody else is the same way. They remind me very much of the old lady who went out visiting one evening and before she returned there came up a cold blizzard, and when she got back to her house she was nearly frozen, and she said to one of her servants, you hitch up old John and go to the coal house and get some coal and take over to Widow Smith's. While the man was hitching up she went in and got thoroughly warm, and then she went around to the coal house and said, "John, I think it is turning some warmer, and you need not carry the coal to Widow Smith's." So these gentlemen cannot appreciate the disadvantages of the people of the rural districts, that have to take a journey of forty miles to get to the Court House. I had a personal experience this winter. During our County Court, which is in the place of a Circuit Court, there were witnesses before the jury that had to travel anywhere from twenty-five to forty miles and the weather was bad and the roads bad, and some of them had to walk and they were summoned and on account of the weather they refused to go. Attachments were taken and the Sheriff was sent and they were brought there and the Judge fined them \$10. That is only one case out of many. Now they tell us if you disturb the present status of the counties it is going to beat the Constitution. I risk nothing in saying that that will be counterbalanced

on the other side. I know sections of the country where they will say if this privilege is not given, let the Constitution go to the dogs.

There are various advantages that grow out of the organization of new counties. Compare the State of Georgia with Alabama. Everybody who knows anything about Georgia knows there is not a State in the Union whose citizens are better satisfied with their State and the conditions than the State of Georgia. While that State has scarcely more than eight or ten thousand square miles more territory than Alabama, she has 137 counties to Alabama's sixty-six. Every man in the State of Georgia can get up and eat his breakfast, go to the county seat, and get back home before night.

A Court House in a sparsely settled district is a civilizer and an educator. I remember just after the war new counties were organized along the Georgia line under the Constitution of 1865. Up to that time men had to travel forty miles through the piney woods to get to the Court House. Now the court houses are built up and you can see the marvelous improvement socially and every way and all attributable to these county towns in their midst. They are great educators. A man lives eight or ten miles from the Court House and he goes out and talks to the doctor and the lawyer and the preacher and the merchant and then he goes back home with a fund of information which his family gets. You put him forty miles from the county seat and he never gets there unless the Sheriff is sent after him. I am surprised at the Chairman of this Committee. I remember and so does he some years ago that there was a mighty barren section up where his county is. It was said that a crow could hardly fly over it without carrying his rations. But there came a colony of Germans and settled down there and the first thing they did was to ask to organize a new county. Of course that was opposed by the fellows who live around the Court House. I remember that the Chairman of the Committee of the Legislature would not report the bill and it was reported by another member of the Committee, and we got the county of Cullman, and I am surprised that the gentleman from Cullman, coming here with a provision which practically says that we shall have no new counties, that we don't care about any others.

I don't care to protract the discussion further. I have given some reasons and I will say to my Court House friends, and I like them all, a better class is not in Alabama, and they are sincere in what they say—that this article don't create new counties. It is to be left to the good sense and the wisdom of the people of the Legislature within years to come, and it is a fact within my personal knowledge that for thirty years the Court House towns have always controlled things, and unless they united on passing a measure it never passed. In view of that fact, I risk nothing in

saying that in years to come, it will be the same way, and in view of the restrictions thrown around that article about the organization of new counties and about the removal of court houses and the fact that the Court House towns have always controlled things in the Legislature, it seems to me you can take no risk in allowing this measure to go in, that unless there is infinite merit in a proposition to create a new county, it won't be done.

Don't let us shut the gates, so that in the next decade, when our population will be increased at least 25 per cent. and our great State filled up with people, we won't be able to form any new counties and some of our people will have to go twenty-five or thirty miles to a Court House.

Now they say that it will increase taxation. It may, but if these gentleman who desire to form a new county are willing to assume the taxation, they ought to be allowed to do it. It is just like a fellow who won't allow his boy to go out and build him a home, but wants him to stay around home so that what he makes will go to the homestead. Let the boys go out and build their shacks and start to housekeeping, and in the years to come Alabama, instead of sixty-six courthouses, schools and churches, will have 100.

MR. ROGERS (Sumter)—I do not feel that I can add anything to the remarks that have been made by the delegate from Cleburne. I simply want to go on record now as going in the band wagon of progress in this enlightened twentieth century. When States are first organized the counties are large, as a matter of course, because they have not a sufficient number of inhabitants or wealth to have smaller counties. But as the counties grow in wealth and the people increase, it has been the policy of all civilized countries to reduce the area of counties so that a man could go to his court house and attend to his business in one day and get back home by night.

Another reason as has been stated by my friend is that the establishment of a court house congregates the officers of the county there and they build up improvements, schools and churches. There can be no reason urged against this reduction, except two. One is that it will reduce the pay of certain officers in the State of Alabama, the Probate Judges and other officers, who draw their living from the people of these counties. Another is that certain counties may be afraid if their areas are reduced they will lose a certain amount of influence which they have in dominating the laws of the State of Alabama. But neither of these reasons is sufficient to retain these cumbersome counties, where men sometimes reside forty miles from the court house. I submit whenever a community has a sufficient amount of wealth and people and wants to establish a new county, we should permit them to do so. If they want to tax themselves, that is their business. They can't

get out of paying their proportion of the debts of the old county. They are compelled, under the provision that we are to adopt, to assume their just proportion of the debt of the old county.

No injustice will be worked on anybody, and no reasons can be assigned why those who live around court houses now should want to retain the counties unchanged, because thereby they will get a little more money. The money those officers receive does not belong to them. It belongs to the State of Alabama.

MR. OATES—The gentleman stated that new court houses were great civilizers. Don't that depend on the number of barrooms around them?

MR. ROGERS (Sumter)—No, sir; it depends on the number of churches that grow there. Whenever you build a new court house you have a clerk and a sheriff and a probate judge, and from their very necessity they establish schools, and their wives build the churches, and the barroom can go to the devil, where it ought to go. It has nothing to do at all in the civilization of this country.

The delegate from Washington here arose.

THE PRESIDENT—Will the gentleman yield to a question from the delegate from Washington?

MR. PALMER—No, sir; I don't want to ask a question. I wanted to make a speech.

MR. ROGERS (Sumter)—If that is the case, I shall desist, as I am sure we are all anxious to hear the delegate from Washington.

MR. PALMER—I would like to give a bit of my experience in regard to these new counties. I judge from the looks of the majority of these men's faces that 90 per cent of this Convention live at and near the court houses and you cannot appreciate nor realize what a farmer has to contend with who lives thirty or forty miles away from the county seat. I was born and raised in the county of Wilcox, in a prairie county, and I resided there all my life until three years ago last December. I lived at least twenty miles from Camden, the county seat of Wilcox, and the most of it was rough prairie road. At that time no railroad was built there and after standing it the greater portion of my life, that was one of the main objects of my pulling up and leaving my homestead in Wilcox County, to get into more convenient quarters. I moved from there to Washington County, and I now live within five miles of St. Stephens, with a perfect road, high and dry and level. No one can appreciate, no one can know or realize the convenience of a man living on a good road near his court house over one that lives in the remotest section with bad roads to get to his court

house. The thing is this: The officers build the court house, and, I am sorry to say, the most of the attorneys there seem to think a great deal of the people that live at a distance. They love them tremendously, and they are afraid they will tax themselves, and they are afraid they will spend their money in building court houses, for themselves. The court houses are built for our convenience, to keep our records, and so that all offenses against the law may be speedily tried. Now, you take men that live thirty or forty miles from the court house, and there is bad roads to it, and they will submit to almost any intolerance before they will push a prosecution against a man for any common offenses. The worry and trouble and labor of getting to the court house takes up so much time and expense that they pass over matters without prosecution, where otherwise, if they lived in close proximity they would push the prosecution.

Now gentlemen of the Convention, I am satisfied most of you live at or near court houses. They tell me that ninety-six lawyers are in this body. If that is so, there must be ninety of them that live near the court house. It is a mighty poor lawyer who is going to get off in the piney woods and hills. Now, another thing: The old lawyers, the way things are fixed now, get all the clients and you young fellows almost starve to death. Right here in Montgomery I will guarantee that a large majority of the lawyers are hardly making a living. You are over-shadowed by such a lawyer as the gentleman on my left and the one on my right, and you young lawyers hardly get enough money to allow you to smoke a few cigars and occasionally drink a little liquor. I would vote for my friend's substitute if he would leave out that \$2,000,000 proposition. The 400 square miles is all right, but you put in the \$2,000,000, and that will kill the formation of a new county in every county in the State except Bessemer, which I think the gentleman is working for. But there is a safeguard in this. You get the population and get the representation and that is enough—if you get population sufficient to support one representative in the Legislature and leave the old counties enough. That is sufficient. I hope the Convention will have consideration enough for people that live thirty or forty miles from the county seat and give up their selfishness and some of you get out of your counties and go into the new counties and build up and develop the new county. I am in hopes the Convention will vote for the 400 miles amendment.

MR. LONG (Walker)—I think the Convention is ready to vote on this proposition. There is only one county that has not made any progress and that is the county of Cleburne. It stands right close to the Georgia line where all that prosperity has been. I move to lay the amendment of the delegate from Cleburne on the table.

The yeas and nays were called for by Mr. Howell of Cleburne and the call was sustained, and the result of the roll call was as follows:

AYES.

Almon,	Heflin, of Chambers,	Oates,
Banks,	Heflin, of Randolph,	O'Neal (Lauderdale),
Barefield,	Henderson,	O'Neill (Jefferson),
Boone,	Hodges,	Opp,
Browne,	Hood,	Parker (Elmore),
Burns,	Howze,	Phillips,
Cardon,	Inge,	Pillans,
Carmichael, of Colbert,	Jenkins,	Proctor,
Carnathon,	Jones, of Montgomery,	Robinson,
Cobb,	Jones, of Wilcox,	Samford,
Coleman, of Walker,	Kirk,	Sanders,
Craig,	Knight,	Sentell,
Cunningham,	Ledbetter,	Smith (Mobile),
Davis, of DeKalb,	Leigh,	Smith, Morgan M.,
Dent,	Long (Walker),	Spragins,
deGraffenreid,	Lowe (Lawrence),	Stewart,
Eyster,	McMillan (Baldwin),	Thompson,
Espy,	McMillan (Wilcox),	Vaughan,
Ferguson,	Maxwell,	Waddell,
Fletcher,	Merrill,	Walker,
Foster,	Miller (Marengo),	Watts,
Graham, of Montgomery,	Miller (Wilcox),	Weakley,
Graham, of Talladega,	Moody,	White,
Grayson,	Murphree,	Williams (Barbour),
Greer, of Perry,	NeSmith,	Williams (Marengo),
Harrison,	Norman,	

Total—77.

NOES.

Messrs. President,	Glover,	Pettus,
Bartlett,	Grant,	Pitts,
Beavers,	Greer, of Calhoun,	Porter,
Blackwell,	Haley,	Rogers (Lowndes)
Byars,	Howell,	Rogers (Sumter),
Carmichael, of Coffee,	Jones, of Bibb,	Sanford,
Case,	Jones, of Hale,	Sloan,
Cofer,	Malone,	Smith, Mac. A.,
Cornwell,	Martin,	Sorrell,
Davis, of Etowah,	Palmer,	Studdard,
Eley,	Parker (Cullman),	Whiteside,
Gilmore,	Pearce,	Wilson (Wash'gton),

Total—36.

## ABSENT OR NOT VOTING.

Altman,	Hinson,	Reese,
Ashcraft,	Jackson,	Renfro,
Beddow,	King,	Reynolds (Chilton),
Bethune,	Kirkland,	Reynolds (Henry),
Brooks,	Kyle,	Searcy,
Bulger,	Locklin,	Selheimer,
Burnett,	Lomax,	Sollie,
Chapman,	Long (Butler),	Spears,
Coleman, of Greene,	Lowe (Jefferson),	Taylor,
Duke,	Macdonald,	Weatherly,
Fitts,	Morrisette,	Willet,
Foshee,	Mulkey,	Williams (Elmore),
Freeman,	Norwood,	Wilson (Clarke),
Handley,	O'Rear,	Winn,

So the amendment of the delegate from Cleburne was laid on the table.

During the roll call.

MR. BEDDOW—On this question I am paired with Mr. Selheimer. He would vote aye and I would vote no.

MR. MILLER (Marengo)—I now move to substitute the minority report of Hood and Miller for the other minority report of Cobb, Parker and Jackson.

THE PRESIDENT—The minority report seems to relate to three sections.

MR. WHITESIDE—I have an amendment.

THE PRESIDENT—We will settle the question as to the minority report.

MR. BLACKWELL—That minority report is to Sections 2, 3 and 4.

THE PRESIDENT—That is one minority report, and then one of the minority reports is confined to Section 3.

MR. MILLER—I have a substitute for Section 3.

THE PRESIDENT—You offer it as a substitute for the amendment offered by the gentleman from Morgan?

MR. MILLER (Marengo)—Yes, sir.

MR. COBB—Will it not suit your views just as well to strike out "five hundred" and insert six hundred?

MR. MILLER—No, sir, Mr. President, I yield the floor to the gentleman from Hale.



MR. deGRAFFENREID—I offer as a substitute for the pending question, the following, which I ask the Clerk to read.

THE PRESIDENT—For Section 3?

MR. deGRAFFENREID—Yes.

THE PRESIDENT—Or for the amendment offered?

MR. deGRAFFENREID—And for the amendment offered by the gentleman from Morgan, yes, sir.

The amendment was read as follows: 'The General Assembly may, by a vote of two-thirds of both Houses thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered except by a like vote; but no new county shall be hereafter formed of less extent than six hundred square miles, and no existing county shall be reduced to less than six hundred square miles, and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation.'

MR. deGRAFFENREID—As I understand it, the amendment offered is the provision now contained in the Constitution with reference to counties and county boundaries, and upon the adoption of that as a substitute, I call for the previous question.

MR. BLACKWELL—I will ask the gentleman to withdraw that. The majority of the committee have not been heard.

MR. deGRAFFENREID—I will withdraw, but wish to submit a few remarks. Mr. President and gentlemen of the Convention, the matter that is presented to you is one of some importance to the State. It is one that has been sprung in this Convention and was not discussed in the campaign before the people. This Convention was called for the purpose of reforming the suffrage of this State, with a pledge on the part of some of the members of this Convention at least, that the taxes of the State should not be increased, but that they should be decreased if it could be done. Upon those issues we went before the people. Upon those issues this Convention was called, and upon those issues most of the delegates to this Convention were elected by the people. We are not adopting a Constitution which will by virtue of our act be the supreme law of this State, but we are adopting a Constitution under a pledge that it will be sent back to the people for ratification by them. I am not informed as to the wishes of the people of Alabama upon this subject. I do not believe that there is a single delegate here who can truthfully rise in his seat and say that he is authorized to speak for the people upon this subject.

MR. HOWELL—I am, sir.

MR. deGRAFFENREID—You are, but there are no others. I did not think that there was one who could say he knew what the people of Alabama desired upon this subject.

MR. HOWELL—I know what they want in my part of the county.

MR. deGRAFFENREID—In your part of the county. Excuse me, but—

MR. ROGERS (Sumter)—If the gentleman will permit a question, some days ago in your eloquent way you advocated increasing the pay of the Governor of the State of Alabama. Were you authorized to speak for the people of Alabama as to what they wanted done about that?

MR. deGRAFFENREID—We didn't put it in the Constitution, either.

MR. ROGERS (Sumter)—But didn't you want to put it in there?

MR. deGRAFFENREID—Yes, I wanted to and I am willing, so far as that small matter was concerned, to go before the people and say it was right.

MR. ROGERS (Sumter)—Will the gentleman permit another interruption?

MR. deGRAFFENREID—Yes.

MR. ROGERS (Sumter)—We are willing to go before the people of the State of Alabama and say whenever you want counties of four hundred square miles, you shall have it.

MR. HOWELL—I misunderstood the gentleman's question. I meant to answer that I knew what our people wanted.

MR. deGRAFFENREID—In your section.

MR. HOWELL—In my section.

MR. deGRAFFENREID—I understand, and I did not challenge that. I suppose every man here feels that he knows something of the wishes of the people of his particular locality about this matter, but this is a subject in which all of the people of the State of Alabama are interested.

Now some gentleman has referred to the State of Georgia, where we know they have a number of small counties. It was only a day or two ago that a distinguished gentleman of that State, who was in the State of Tennessee, where I happened to be, said to me that he had read the report of this Committee, and

that he wanted to say that the State of Georgia had made a grave blunder in providing for so many small counties, and that a number of the county seats of the counties of Georgia were mere court houses, with a store and postoffice, unable to keep up the officers and the dignity of a county.

But, gentlemen, there is another matter I desire to place before you. We came here as I have already stated, for the purpose of reforming the suffrage. That was the main purpose for which this Convention was called. We would not have been here had it not been for that subject. Let us be very careful not to load the Constitution down. Let us be very careful not to do anything here that may render it doubtful whether or not this Constitution will be adopted by the people when we send it back to them for ratification. Remember that it is a matter of the gravest importance to the State of Alabama, to its integrity and its prosperity, that we should be relieved from the ignorant and the vicious at the ballot box. Let us be careful not to do anything that will deflect the attention of the people from that subject when this instrument is back to them for adoption—

MR. CORNWELL—I move to lay that amendment offered by the gentleman from Hale, on the table.

MR. BLACKWELL—I will ask the gentleman to withdraw that for a while. The majority of the Committee have not had an opportunity to oppose the measure, and I would like to speak in opposition to the measure offered by the minority.

MR. CORNWELL—I will yield to the gentleman.

MR. BLACKWELL—In behalf of the Committee, Mr. President and gentlemen of the Convention, I have no doubt that it is amusing to a good many of us here to see how readily we about face, in our ideas, when our interests suggest a change of front. You will notice, Mr. President, whenever we have got a measure here that we want to put in, we know it is not legislative in its nature and character, and whenever anybody else has got a measure that we don't want, we know that it is legislative in its nature and character. You will notice, also that whenever a thing is offered a gentleman does not want, he says we are loading down the Constitution. You will notice he says we have got up something that the people don't know anything about, and yet when he supports anything that the people have not been consulted about, why he says, I am willing to risk it before the people. I am willing to risk anything before the people in this matter.

Now, Mr. President, we live in a progressive age. The State of Alabama today has a population of practically two millions of people. The first limit in 1819 fixed the area of counties at nine hundred square miles to the county. In 1865 we had grown so that they said that six hundred square miles was a sufficient limit. We

have got twice as many people here today as we had in 1865, and we have grown much more rapidly since that time than we did from 1819 to 1865. Then if it were wise upon the part of our ancestors to make that change because of the increased wants and demands of the people and the population of the State, is it not wise for us to do it? We are growing on all lines, and this Constitution is not to last only for this year, or until the meeting of the next legislature, but the probabilities are that this Constitution will last for a half century to come. The probabilities are that in Alabama then, if we increase from now until that time as we have in the last thirty-five years, we will have seven or eight millions of people to accommodate before a new constitution is framed for the State of Alabama. Are we willing to say that because we have always done so and so that we are in favor of continuing to do so and so? Are we willing to say that we will have no better houses than our ancestors had? Are we willing to say that we will have no better schools than our ancestors had? Are we willing to say we will have no better roads than our ancestors had? Shall there be no room for growth and development? Is it necessary for the family to live in the same house it has always lived in? As a matter of fact I am informed today that there are counties in Alabama where they have to go as much as forty miles to get to the court house, and we have had before this Committee petitions from people of St. Clair County, showing us that the topography of that county makes it practically impossible for those people to ever change the conditions and get to their court house with any more convenience, as there is a great mountain intervening between them and their court house. We have a statement made to us from Henry, Geneva and Dale counties, as to their inconveniences, being twenty miles or more from the records in their counties. The same statement is made as to a part of Bibb and Shelby counties, and the same statement comes from Bessemer and from a part of Tallapoosa.

MR. HOWELL—And Talladega and Clay.

MR. BLACKWELL—Talladega and Clay also make it. Now there are only two States in the Union that have a larger area for their counties than the State of Alabama, and they are the States of Texas and Wisconsin. As a matter of fact there are twenty-three States that have no limit at all as to county boundaries, and here in our sister State of Georgia, they have counties with as small a limit as one hundred and twenty-one square miles.

MR. SANFORD—As small as ninety.

MR. BLACKWELL—And in the State of New York they have counties with as small a limit as fifty-seven square miles. We all know that it is a fact that county seats build up towns. We know that the money invested in those towns becomes subjects of taxation, when frequently it is not a subject of taxation if it is

kept in the pocket before it goes there. We know that they do build churches at such places. We know that they build schools there. We know that they become great civilizers and great educational centres, and frequently the commercial metropolis of the County. At this age of the world it seems to me, when the people themselves are willing to impose this tax on themselves as my friend from Washington said, they ought to be allowed to have the privilege and the opportunity of imposing the taxes, if they furnish additional conveniences to the people. Can you conceive of what Alabamians want for fifty years to come? I understand that in some of these populous counties now, and it is true in some of our North Alabama counties, that some of them have come to be so large that dozens and dozens of men, summoned before the grand jury, have to lay over and night, because the county is so big that as a matter of fact they cannot attend to the business and can't summon witnesses in a day. New counties are needed in those places for the convenience of the people. That is what they are made for. There is no question of that. Are these unreasonable requests.

It is wonderful how anxious we are to keep the people from taxing themselves. It is said that the county officers are opposed to it. Why, sirs, as a matter of fact, some of our counties have grown so large that the fees of the offices of Probate Judge and Sheriff in those counties many times multiply several times the salary of the Governor of the State of Alabama. We understand that those selfish interests who get large fees out of the offices that they hold, will suggest to these men that we do not need new counties, but what about the great body of the people? These men are already provided for, abundantly provided for, and are we making a Constitution simply for the office holders of the State of Alabama, or are we making a Constitution for the whole people of the State of Alabama.

What do you think of its possibilities of this State. The State Geologist, in a report to the Governor, says that Alabama has eleven thousand square miles of coal, and it reads like a fairy tale, but he says that at the present rate of consumption it will last the world for two hundred and seventy-five years. He says further that the money for taking that out of the mines, as a matter of fact, will be two hundred times as much as the value of all the property in the State of Alabama, and we have these inexhaustible resources and we all want to show what our possibilities are in the future, and yet here we are building not for the great masses of the people, but we are building apparently for those who do not want the fees of the offices cut down in large counties, where they are office holders now. The committee itself is conservative, and very conservative in its estimate.

What are you going to do with these demands for all the future? Are we to say that these counties with their present limits are to remain the limits for the time that this Constitution is to live? That is the idea of some of the members. As a matter of fact I hope that we will not be so short sighted as that.

In addition to the coal that we have mentioned, we have inexhaustible mines of iron, and we have the limestone rock to make the coal and iron into the merchantable product. We have all these resources in Alabama, and with the hope of the future, we see before us the gildings of a coming day, brighter, more prosperous, more hopeful, than all the days that have gone.

THE PRESIDENT—The time of the gentleman has expired.

MR. McMILLAN (Wilcox)—Like the distinguished gentleman from Hale, I, too, realize that the primary object for which the Convention was called was to restrict the suffrage, and as far as possible to eliminate the negro from politics.

MR. HOWELL—Will the gentleman allow a question? Please tell us why we have been here nearly fifty days and have never come to that question yet.

MR. McMILLAN (Wilcox)—As I say, I feel that was the primary object of our being called together, but when we take into consideration that the fundamental law that we are now forming for the people, which I believe the people will in their wisdom see fit to ratify, will be our fundamental law for twenty-five or fifty years, and we must look to the future needs and necessities of our people, I claim that their necessities cannot be better subserved than by reducing the area of the counties. In the Constitution of 1865 the Convention reduced the minimum area of counties one-third from 900 to 600 square miles. At that time the population numbered 600,000. Today, sir, approximately two millions of people live within the confines of the great State of Alabama, and twenty-five years from today, at the present rapid rate of progress, there will be approximately four millions of people residing within the borders of the State of Alabama. Shall we say then with these lights before us, to the independent and progressive people, that the same conveniences which sufficed twenty-five years ago must suffice for one or two score years to come. With all the lights before us, will this not prove us as narrow, and not in keeping with the spirit of the age?

Furthermore, this report does not say that they shall but only makes such a provision possible. With the possibilities before the State, and with the great progress we are pushing on to, I say that the people should be let alone to settle these matters as they wish.

Now, Mr. President, I contend that the formation of new counties will build up school centers. The material interests of the people will go forward, and the interests of the people will be better subserved, and I trust that the members of this Convention will grant the reduction.

MR. COBB --I merely desire to call the attention of the delegates who will give me their attention, to the difference between the minority report made by myself and another, and the minority report now under consideration as an amendment to it. So far as the extent of the area of the counties is concerned we are together. Both of these minority reports favor the retention of the area of six hundred square miles for the old counties. The only difference is that the minority made by myself accepts the majority report of the committee so far as regards the machinery by which new counties are formed, and county lines changed, which if adopted will force the question through the Legislature to a vote of the people affected by it. The other minority report confers upon the Legislature absolute power to make new counties without regard to the wishes of the people, so far as those wishes can be ascertained by a vote. That is the only difference.

There was no question before the Committee on County Boundaries which gave us more vexation and caused more discussion than this question as to the area of the counties of the State. There are three propositions before you, and I beg the members of this Convention to get these three propositions well in mind. One of these propositions is, and that is the proposition of my friend here on my left (Mr. Blackwell) to leave not only the new counties with an area of not less than six hundred square miles, but to provide that no new county shall be formed with a less area than six hundred square miles. The majority report of the committee favored the establishment of an area five hundred square miles, both as applicable to new counties to be formed, and to the old counties from which these new counties are taken. My report contemplates leaving the old counties with an area of not less than six hundred square miles, and wherever it is desirable and practicable new counties may be formed with an area of not less than four hundred square miles. Now these are the three propositions that are to be presented for your consideration. I say this, not because these propositions are now before you, but it is in order that you may be advised of the course which is being pursued by the several divisions of the committee. The present proposition is whether you shall retain the majority report of 500 square miles, or whether you will strike out the word five and insert the word six. So that the pending proposition is that a county shall consist of not less than 600 square miles. That is the only question, excepting the question that I have just presented to you, touching the manner in which the new counties shall be formed, upon which there is a difference between the two minorities.

Now that is the whole question, and the whole case. I do not propose now to enter into anything like an elaborate argument in support of my proposition of retaining 600 square miles as the area of the old counties. I am fully aware of the force of the reasoning which would ask a reduction from 600 to 500, but the reasons upon that side are not all of the reasons in the case. There is another side to this proposition, and just to give you a few pointers, in the first place, by reducing the area of the counties from 600 square miles, now obtaining in the old counties, to a lesser number of square miles, you destroy the symmetry of the old counties. Further than that, you incur the danger of leaving old counties and making new counties with an insufficiency of wealth in them to sustain the counties with the proper dignity. My friend here speaks of the small counties in certain other localities to which he refers. Small counties, gentlemen of the Convention, belong to the thickly populated States, where there is great wealth. They do not properly belong to a State where the population is not dense enough to enable each one of the counties with dignity to sustain the county which they form. With respect to what has been said of Georgia, the gentleman is entirely off the track when he says that the people of Georgia are content with their present condition.

MR. HOWELL—Do you think the dignity of a county is paramount to its convenience?

MR. COBB—Yes, sir, I do; emphatically yes; but there is no conflict between the dignity and the convenience. Convenience is a relative term. It is not absolute, and, therefore, what you may call convenience under one set of circumstances, would not be entitled to that designation under other and different conditions.

MR. ROGERS (Sumter)—What do you call the dignity?

MR. COBB—The dignity is the power of a county, being a part of the government of a State, to maintain itself with dignity. With population enough, with intelligence enough to maintain itself, with that degree of dignity which applies to the State of Alabama in providing for all the machinery of its government.

MR. ROGERS (Sumter)—How would you compare the dignity of Cleburne County with that of Jefferson?

MR. COBB—I cannot make that comparison, because I am not prepared to know anything about these counties, but I say that a county is not maintained with dignity as it is over here across the border in Georgia, where, as my friend over there told me the other day, a matter of his own personal knowledge, the Judge of the Ordinary, (corresponding to the Judge of Probate of Alabama), could not get fees enough out of his office to support himself, and, therefore, he had about six days in the week to work on his farm, and had one day to come to town to attend to business.



MR. SANFORD--That is a blessed condition.

MR. COBB--The same way with the sheriff, and the same with the other officers. My friend says that is a blessed condition. His idea of government is quite different from mine. The idea that a county shall be formed, without the ability to provide for these officers, who should stay in their places of business every day in the week, and who should have pay enough to relieve them of the necessity of pulling the ropes over a mule six days in a week.

THE PRESIDENT. The time of the gentleman has expired.

MR. SANFORD--I move that he be allowed to continue his argument.

MR. COBB. No, I do not care to consume further time.

MR. PARKER (Elmore)--Mr. President and gentlemen of the Convention, I am very diffident when, for the first time, I appear on the floor since this Constitution convened, and if I was not impelled by a sense of duty, to express myself on this occasion, I would content myself, as I have in the past, by listening to the speeches of others and voting on the pending question. But I feel that it is my duty to make some remarks in line with the minority report that has been submitted to this Convention on this question. As Judge Cobb, who has just preceded me, has said, we do not take issue with the amendments proposed by the gentleman from Hale in all particulars, but I deem that it is proper now to say what I have to say in reference to this question of counties and county boundaries.

Mr. President, this is an economic question. The conditions in Alabama are such that it is unfortunate any number of square miles should constitute the unit of county formations in Alabama. If we were for the first time forming a Constitution for the State of Alabama, and we had the diversified interests that we have now, it would have been wise for our forefathers to have taken into account not only the area in square miles necessary to constitute a county, but also its population and taxable wealth. If that were the condition today, we would have no trouble in arranging counties and county boundaries to suit the varied economic conditions in the State of Alabama, but the old Constitution has fixed the constitutional limit of 600 square miles, under which most of the counties in the State were formed, and reducing the constitutional limit of the old counties would precipitate bitter fights in a great many counties in the State of Alabama and endanger the ratification of this Constitution. As has been already said, the purpose of this Convention was not to consider economic questions primarily. The people are not prepared for this question. It was not discussed in the campaign, and I venture to say that had the propositions that have been agitated on this floor been discussed in the campaign, the people would not have sustained the call for this Constitutional Convention.

Now, sir, as a member of the Committee on State and County Boundaries I take it upon myself to try and inform myself as to the sentiment of the people of Alabama on this question. I have sent letters all over the State of Alabama, and while it is true I had to write to the officers of the county governments because I did not know who else to write to, yet the answers to these interrogatories were almost uniformly against the proposition of cutting down the area of counties and they further said it would endanger the ratification of this Constitution. The answer comes back that counties are already up to the tax limit, and any reduction of area will reduce the revenues of the counties and will, therefore, produce opposition on the part of old counties. Now, sir, if the Convention will bear with me just a moment, I will read a circular letter which I have addressed to the officeholders throughout the State of Alabama. I see gentlemen smiling when I make that announcement, and they say yes, as a matter of course the officeholders in the State of Alabama are opposed to it, but sir, whatever is, is, and if it is the fact that the officeholders in the State of Alabama are opposed to it, have we not got to depend upon the political agencies that called this Constitutional Convention, and helped to promulgate and produce this call? Haven't those same agencies, sir, got to ratify or reject it?

"As a member of the Committee on State and County Boundaries, which has decided upon a report by a majority of one in favor of the reduction of the area of counties, I desire information for my guidance and that of the Convention on this subject, before a vote is taken, and for this purpose I am sending out this inquiry to the various counties throughout the State. I will thank you to give your best information and reply to the following questions by return mail:

"First, what office, if any, do you hold in your county? Second, was this question an issue, or was it discussed in your county during the campaign? Third, what is the sentiment of your people on this question? Is it divided? If so in what proportion? How would a change in the present Constitution in this respect affect the ratification of the proposed Constitution? If the area of counties is reduced will it increase the county rate of taxation?"

Now, sir, I received two hundred and fifty or more letters in answer to that inquiry. I have taken the trouble to abstract one hundred and sixty-three of those letters. The replies were this way: One hundred and twenty-three answers say there was no agitation of the question in their County, and that it was not an issue and was not discussed; twenty-eight say that it was discussed—

MR. GRAHAM (Talladega)—I see it is about 6 o'clock, and I have no doubt he would like for the Convention to have the full

benefit of the documentary evidence he has, and I ask the gentleman to yield to me to make a motion.

MR. PARKER (Elmore)—I will.

MR. GRAHAM (Talladega)—The court house question is a very warm one here, but it is not so warm as the weather. We have done a hard week's work, and as the thermometer registers one hundred and ten I move when this Convention adjourns this evening, that it adjourn to meet on Monday at 12 o'clock.

There were expressions of dissent.

MR. GRAHAM (Talladega)—I move a suspension of the rules for the purpose of putting that motion upon its passage.

MR. GREER (Calhoun)—And upon that I call for the ayes and noes.

THE PRESIDENT—In the opinion of the Chair a suspension of the rules will not be necessary. The ayes and noes have been demanded. Is the call sustained?

The call was not sustained, and upon a vote being taken a division was demanded. The secretaries expressed doubt as to the correctness of their figures.

The clock struck the hour of 6 o'clock.

MR. HEFLIN (Chambers)—I now make the point of order that under the rules, this Convention stands adjourned.

THE PRESIDENT—The ayes were 36 and noes 45. The vote will be verified.

And by a vote of forty-four ayes and forty-seven noes, the motion was lost.

Leave of absence was granted to Mr. Vaughn of Dallas, for tomorrow and Monday, and thereupon the Convention adjourned.

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### CORRECTION.

In the third column, proceedings forty-second day, during the course of Mr. O'Neal's remarks, the expression, "No, the gentleman from Henry said there is a masked battery behind every provision of the repeal," should read "every provision of the report."

## FORTY-FOURTH DAY

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MONTGOMERY, ALA.,

Saturday, July 13, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. Howell as follows:

O Lord, we thank Thee that we have been preserved through another night, and that this morning finds us in the enjoyment of the usual health of body and mind, and now we are here to address ourselves to the work before us. We pray that Thou wilt accept our gratitude for all blessings of life, for home and friends and country. We are glad indeed that our lines have fallen to us in pleasant places. O help us to recognize that every good and perfect gift comes down from the Father of life, and may we render to Thee the homage of our hearts and the service of our lives. Forgive all our unforgiven sins, prepare us for every good word and work, and help us to live soberly and righteously in this world, and enable us when we all come to die to feel that we have done our duty. O Lord, be light and wisdom to us, guide in the way of truth and righteousness and to Thy name shall be all the praise, now and forever. Amen.

Upon the all of the roll 88 delegates responded to their names.

Leaves of absence were granted as follows: Mr. Carmichael (Colbert) for today; Mr. Jones (Wilcox) for today, Monday and Tuesday; Mr. Bulger for today and Monday; Mr. Sorrell for Monday; Mr. Cunningham (Jefferson) for Monday and Tuesday; Mr. Tayloe for today; Mr. Cobb for Monday; Mr. Morgan M. Smith for today and Monday.

MR. SAMFORD (Pike)—I move that when this Convention adjourns this morning it adjourn to meet at 11 o'clock Monday morning.

MR. MALONE—I would like to amend by providing that we remain in session until 2 o'clock.

MR. GREER (Calhoun)—I understand a motion to adjourn is not debatable, but I think the particular time to which the adjournment is taken is.

THE PRESIDENT—At any rate we will hear wise suggestions from the gentleman from Calhoun.

MR. GREER (Calhoun)—I would like to suggest that I think it would be wise for us to meet at the usual time on Monday. If

some cannot get back there will be at least a quorum here, and we had better proceed with the business, and I hope the Convention will remain in session the usual hours today and reconvene the usual hour on next Monday morning, so that its business may be transacted.

THE PRESIDENT The motion is that when this Convention adjourns at its morning session today that it adjourn to meet at 11 o'clock on Monday.

Upon a vote being taken a division was called for, and by a vote of 53 ayes and 33 noes the motion was carried.

MR. GRAHAM (Talladega) The Convention would not agree to leave with me on yesterday, and I decided not to leave the Convention, and I ask to be permitted to withdraw my leave of absence obtained for today.

The leave was granted.

MR. deGRAFFENREID As we have only one session today I move that the roll call be dispensed with this morning and that the Convention now proceed with the business that was on hand yesterday afternoon at adjournment.

MR. ROGERS (Sumter)—I ask the gentleman to withdraw that for the purpose of introducing a short resolution.

MR. deGRAFFENREID All right.

Resolution No. 242, by Mr. Rogers of Sumter:

Resolved, That hereafter if a stenographer submits his notes to any delegate to correct his speech made by said delegate, before such speech is printed in the public record, such stenographer shall hereafter be debarred the duties and pay of stenographer of this convention.

Referred to the Committee on Rules.

MR. ROGERS (Sumter) The purpose of this stenographic report—

THE PRESIDENT—The gentleman is not in order. The resolution is not debatable. The resolution has been referred.

MR. HOWELL I move that he be allowed to debate it.

MR. DAVIS (Etowah) I desire to offer a short resolution.

MR. ROGERS (Sumter)—I move a suspension of the rules that I may have this resolution put upon its immediate passage.

THE PRESIDENT—The chair has recognized the gentleman from Etowah.

MR. WADDELL I rise to a point of order.

THE PRESIDENT—There is nothing before the House. The clerk will read the resolution.

Resolution No. 243, by Mr. Davis of Etowah:

Resolved, That after Saturday, the 20th inst., the official stenographic report be discontinued.

Resolved further, that the President of this Convention be authorized and instructed to cancel the existing contract with the official stenographers in accordance with the terms of this resolution, and that he be authorized to draw his warrant in their favor for such amount as may be due said stenographers, including the week ending July 20th, 1901.

Referred to the Committee on Rules.

THE PRESIDENT—The gentleman from Hale has moved that the call of the roll be dispensed with.

MR. PROCTOR—I desire to submit a report for the Committee on the Journal.

MR. deGRAFFENREID—I withdraw the motion for that purpose.

The report of the Journal was read, stating that the Journal for the forty-third day of the Convention had been examined and found correct, and the same was adopted.

MR. BROOKS—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman will state the question of inquiry.

MR. BROOKS—I understood the delegate from Sumter just now to offer a resolution in regard to the stenographic report of the remarks made by delegates upon the floor. I apprehend that the Convention, under the rules, has a right to consider that question without reference to the Committee on Rules, because it has reference to privileges of members on this floor. If the President will refer to rule 28 he will find that all resolutions, before they are voted on, shall be referred to and reported from the Committee on Rules, except resolutions relating to the privileges of the Convention or its members. I apprehend that the resolution offered by the gentleman from Sumter (Mr. Rogers) has relation to the privileges of the members of the Convention.

THE PRESIDENT—The gentleman rises to a question of personal privilege and discusses the privilege of another delegate. The resolution of the gentleman from Sumter related to the stenographic report, and to the conduct of the stenographers, and it was referred to the Committee on Rules, the gentleman not mov-

ing a suspension of the rules, when the resolution was read; thereupon the Chair recognized the gentleman from Etowah.

MR. BROOKS—Will the Chair indulge me one moment to correct a statement made by the President? I did not rise to a question of personal privilege, but I rose to a question of parliamentary inquiry.

MR. WHITESIDE—I ask unanimous consent to introduce a petition, and have it read.

The consent was given, and the petition read as follows:

To the Honorable Constitutional Convention, Montgomery, Ala.:

Dear Sirs—We respectfully represent that whereas, the Railroad Commission appointed by the Governor and paid by the railroads has proven an entire failure; and whereas the shipper and consumer should have some representation in the naming of rates and making of rules, by what is otherwise alien and arbitrary power. That whereas the Express, Telephone and Railroad franchises are given by the State, the power of these franchises to tax will be limited by the State. We therefore request that your honorable body will give us a commission, elected and paid by the people, and place all franchises, which have power to tax, within their review.

Anniston Hardware Co., J. C. Spence, President; A. W. Bell; Anniston Manufacturing Company by J. B. Goodwin, Treasurer; Adelaide Mills, by F. Robinson, President; Anniston Manufacturing Co., by P. A. Howel, Treasurer; Frank Nelson, Jr.; Anniston Supply Co., by Owen Reynolds, President; J. M. Stringfellow; First National Bank, by J. M. Stringfellow, President; Anniston Iron Mills, J. T. Gardner, Treasurer; Anniston Lime and Stone Co., by R. H. Cobb, President; Connor Cobb Investment and Imp. Co., by R. H. Cobb; Talbot Foard; Anniston Banking and Loan Co., by M. B. Welborne, President; Anniston National Bank, W. H. McElroy, President; Anniston Electric and Gas Co., H. W. Sexton, G. M.; E. L. Turner & Co.; Anniston Cordage Co., F. M. Jones, Mgr., Evans Brothers, Heflin, Ala.; Reid & Co., Edwardsville, Ala.; W. D. Snow, Model City Brick Works; J. L. Wikle; J. W. McElrath, McElrath Drug Company, Burns & Billingsworth, John H. Frye, Wellman Brothers, Kohn Brothers, Frank McIntyre, Sterne's Grocery, Adler & Company, J. D. O'Bryant & Company, Ingrams, Anniston Trading Company, L. H. Caree, R. O. Watson, Elam Drug Company by W. H. Elam, Secretary; Stickneys Pharmacy by R. H. Stickney; W. E. Lloyd, Anniston Bag Mfg. Co., by A. H. Henderson, President.

MR. deGRAFFENREID—I now renew my motion.

THE PRESIDENT—And dispense with the call of the standing committees also?

MR. deGRAFFENREID—Yes, but if any of them have any report to make, I will not object to its being submitted.

THE PRESIDENT—The special matters before the Convention is the consideration of Section 3 of the Article reported by the Committee on State and County Boundaries. When the Convention adjourned the gentleman from Elmore had the floor. The question is on the amendment to the amendment offered by the gentleman from Hale.

MR. PARKER (Elmore) — Mr. President and gentlemen of the Convention, I realize that there is a spirit of restlessness pervading this Convention this morning, and I regret sir that I did not have an opportunity to conclude my remarks on yesterday afternoon. As I have not before taken up any of the time of the Convention, I trust that the members of this Convention will bear with me for a little while, until I undertake to argue the correctness of the premises upon which we base our motion to substitute 600 square miles for 500 square miles as reported by the majority of the committee. The first is, that this question was not in issue in the campaign, except to a very limited extent; the second is, that the sentiment of the people is divided, but largely against reduction, and the third is, that in most of the counties the tax rate is already up to the constitutional limit, and hence any reduction in the old counties would decrease their revenues, interfere with the harmony and autonomy of the same, destroy their symmetry, and arouse influences against ratification which under former conditions would be in favor of ratification.

Mr. Howell sought recognition.

THE PRESIDENT—Does the gentleman from Elmore yield to the gentleman from Cleburne?

MR. PARKER (Elmore)—I prefer not to be interrupted now. I will take pleasure in answering any questions that the gentleman desires to ask after my time has expired.

Now, sir, I say that these premises, so far as my investigation goes, cannot be disputed. I have sought every avenue of information that has been open to me on this question. I have not sought to cater to the influence of the office holders of Alabama, because I have this stack of letters here from them, but, gentlemen of the Convention, you must recognize the fact that office holders in Alabama are a potent influence that may be for or against ratification, as their interests may be affected, and I tell you, sir, that a perusal of the stack of letters—

MR. ROGERS (Sumter)—Will the gentleman permit a question?

MR. PARKER (Elmore)—No sir.



MR. ROGERS (Sumter)—For information—

MR. PARKER (Elmore)—I do not want to be discourteous to the gentleman, but—

MR. ROGERS (Sumter)—I would like to ask the gentleman a question.

THE PRESIDENT—The gentleman from Sumter will be in order. The gentleman declines to yield.

MR. PARKER (Elmore)—As I undertook to say on yesterday, an abstract made by me of 163 of these letters shows that 80 per cent. answered that this issue had never been discussed in their counties; 20 per cent. of them say that it was discussed more or less; 10 per cent. say that the sentiment of the county is in favor of a change; 80 per cent. say that the sentiment of the county is against any change of county boundaries and county areas; 5 per cent. say that a change will not affect the result as to the ratification of the Constitution; and 80 per cent. say that it will either defeat it or endanger the ratification of the Constitution. One hundred and thirteen out of 163 say that the tax limit is already up to the Constitutional limit, and that any reduction in area will either cause their counties to go in debt or to increase the tax rate, and thereby incur opposition to the ratification of this Constitution.

Now, gentlemen, I say these are the facts. They are the stubborn facts, and whether we will, or whether we won't, we cannot leave them out in the calculation of the result on this proposition. If I had time I would like to read some of the answers that I have received, but, sir, I recognize that I have neither the time, and neither has the Convention the patience to listen to these replies, but, sir, I give you my word for it, that the abstract that I have made is not from any particular letters, but just as I took them out of this file, with the result that 80 per cent. of the people of Alabama are reported as saying that this question was not agitated, and are opposed to any change, and say that it will endanger the ratification of the Constitution, and that it would increase the tax rate, and that they are already up to the full limit of taxation in their counties.

THE PRESIDENT—The gentleman's time has expired.

MR. COBB—I move that it be extended ten minutes.

MR. ROGERS (Sumter)—I am willing for the gentleman to have his time extended if he answers my question.

Objection was made to any extension of time.

MR. THOMPSON (Bibb)—I desire, very briefly, to attempt to answer the argument made by the gentleman, and also to show

the defect in the amendment, and the advantages of the committee's report over the amendment as offered. In the first place the amendments that have been offered by the various gentlemen place no limitation whatever upon the action of the Legislature in this matter, except to require a two-thirds vote of both Houses. The committee, after careful investigation, has discovered that in many instances legislation has been passed that was not wanted by the people of the respective counties affected, and has sought to safeguard that interest, and we have provided that before any new county can be created or any county line changed, that the Legislature must pass an enabling act, providing for the calling of an election for that purpose, and that bill must have a vote of a majority of the members elected to each House, and in addition to that must receive a two-thirds vote of the people of the county to be affected, or a two-thirds vote of the people in the separate districts that are to be placed in a new county.

MR. COBB—If the gentleman will pardon me, one of the minority reports recommends that very thing. One of the reports you are now discussing.

MR. THOMPSON—I don't think that the one before the House at present does.

MR. COBB—They are both before the House.

MR. THOMPSON—What is the substitute? Both are minority reports.

THE PRESIDENT—The gentleman from Macon is not in order.

MR. COBB—A parliamentary inquiry, that is all.

THE PRESIDENT—The gentleman from Bibb has the floor, and has not been asked, nor has he yielded, and the chair cannot entertain questions of inquiry.

MR. COBB—Will the gentleman yield?

MR. THOMPSON (Bibb)—No, sir; not at present. Under the plan as proposed by the minority and substitute, it merely requires two-thirds of those voting upon that measure, which might be two-thirds of a bare quorum of the House, while we provide that it must be, under the plan reported by the Committee on Representation, 68 members, when otherwise only 46 might pass it. On the face, it seems that their report would place safeguards, but when you come to consider it, it does not. The gentleman from Elmore, a member of the minority, has come before you with some witnesses. The gentleman did not state, I believe, that each of his witnesses were interested parties. We all know how much interest affects a man. They were the County Commissioners, and I submit while county officials are usually fair and honest men, that their

own interests, their own pockets, affect their evidence, as much as the interest of parties may affect their evidence in civil cases, or in any other matters. Do you expect that a county officer would be in favor of cutting off a part of his county, and reduce his salary? It is not human nature for a man to touch his own pocket. Therefore, his witnesses are not the best that might have been brought here, and I submit, furthermore, that the gentleman had other evidence, either in his possession or within his reach, that he might have submitted. He brings here 163 letters, but, gentlemen of the Convention, he forgets to mention a petition signed by 300 citizens of his own county, presented to your committee, of which he is a member. If he comes to us as an unbiased speaker on this question, why did not he present all of the evidence within his reach? It seems that his own party is divided. He says that the people are divided upon this question. Yes, Mr. President, the people of Alabama were divided upon the question of calling a Constitutional Convention. The fact that the people are divided is no reason for his argument or for mine. We are here to formulate a fundamental law for the State of Alabama, to exist for years. Then why should we limit the legislature, and place upon it the same limitations that have existed for twenty-six years?

MR. HOWELL—Thirty-six.

MR. THOMPSON—Thirty-six the gentleman says, it strikes me it is only twenty-six since 1875.

MR. PARKER (Cullman)—Sixty-five is what he refers to.

MR. THOMPSON—Now then, if the history of our State had shown that the Legislature was anxious to legislate upon this subject, there might be some reason for this legislation, but our past history shows that the legislature has been extremely careful in enacting laws for the formation of new counties, only one having been created since our last Constitutional Convention. Now then, as I say, if the history of this State, showed that the Legislature needed limitations upon this subject, then there would be reason for this, but it has not been true, and I submit to this Convention that it would be absolutely safe to leave the Legislature of Alabama without any limitation upon this subject, because the members of the General Assembly would be placed in exactly the same attitude as the witnesses that are brought forward by my friend from Elmore. They would be interested parties. Self interest would demand that they should not enact any law creating a new county that would affect their own, and no new county would ever be created, except upon good cause, and where it was absolutely needed by the people.

Now then as to the reduction from 600 to 500, I submit, gentlemen of the Convention, that if this report is allowed to stand

at 500 square miles, that not over three new counties in the State of Alabama can be created. There may be a large county in one place, which is surrounded by small ones, and there would not be sufficient area to make any great number of new counties with 500 square miles as the limit. Therefore, there is no reason to tie up the communities, where they now need new counties, by saying that a new county shall not be created of less than 600 square miles. It strikes me our State has advanced wonderfully in the last quarter of a century. They can better afford counties of 500 square miles today than they could 600 square miles when that limitation was placed. Therefore it is not a revolutionary scheme. It is not a matter that will raise any great antagonism, and in many places it will give the Constitution many votes for its ratification, in places where they are now distant thirty-five to fifty miles from a court house. They talk about the tax rate, and the increase in the taxes, but they do not think of the many instances where people have to go thirty-five, forty or fifty miles to a court house, and stay there four or five days before he can gain admission to the grand jury, paying their own expenses, with the loss of time and worry, and that is a part of their expense, as much so as the taxes that they pay into the treasury. Then why not take that into consideration. Even if it should cause the tax rate to be a little more, it is more than over-balanced on the other side.

MR. PARKER (Elmore) — I want to ask the gentleman a question.

MR. THOMPSON—I think I will have to give him the same answer he gave the gentleman a while ago, I will answer when my time expires.

THE PRESIDENT—The gentleman will proceed.

MR. THOMPSON—Now then, I hope the Convention will cheerfully consider the Committee's report, and when you consider it you will find that they have been very careful to guard the interests of the people at home, that they have not left the Legislature as free as it has been heretofore, that while we strike down from 600 to 500 miles we place other limitations around it that make it much harder to get a new county under our provision than it has been heretofore.

MR. HOWELL—The gentleman from Elmore said that he would reply to my question when he got through with his remarks. The gentleman from Bibb was then recognized and I had no opportunity to ask a question. I will ask him if he will now permit me to ask him a question?

THE PRESIDENT — The gentleman from Cullman was recognized.

MR. PARKER (Cullman)—Whatever may be the pleasure of this House as to the number of square miles that there should be in a county, I think that we ought to lay upon the table the substitute offered by the gentleman from Hale, and let the question of square miles come up directly upon the minority report of Mr. Parker of Elmore and Judge Cobb. We have endeavored in our report to throw more safe guards around the change of county lines and the establishment of new counties than heretofore. We have endeavored to incorporate in Sections 3 and 4 of this Article the Democratic doctrine of self-government, of home rule, and to allow the people of the territory to say they should have a change or a new county and, therefore, without making an elaborate argument upon this question, I move to lay the substitute of the gentleman from Hale upon the table.

MR. deGRAFFENREID—Upon that I call for the ayes and noes.

MR. BOONE—I would like to have the substitute read.

THE PRESIDENT—The Secretary will read the original section, and the minority report signed by Messrs. Cobb, Parker and Jackson.

The clerk read the original section as follows:

Sec. 3. The General Assembly shall have the power, provided that each house, by a majority of the members elected thereto shall vote in favor thereof, to submit to a vote of the people residing within the territory proposed to be taken from one county and given to another, a change or alteration in county lines, but no such change or alteration shall be made unless such proposed change or alteration shall receive two-thirds of the votes of the qualified electors voting at such election, and, provided, that no county line shall be changed or altered so as to reduce any old county below 500 square miles, or which shall reduce the inhabitants in any such county below the number of inhabitants to entitle the county to one representative.

The clerk then read the minority report as follows:

"We, therefore, move to amend the report of the committee by striking out '500' where it occurs in Section 3, and adding in lieu thereof the word '600.'

"Respectfully submitted,

"J. E. Cobb,

"John H. Parker,

"E. C. Jackson."

The secretary then read the substitute offered by Mr. deGraffenreid as follows: "The General Assembly may, by a vote of two-thirds of both houses thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered except by a like vote; but no new county shall be hereafter formed of less extent than 600 square miles, and no existing county shall be reduced to less than 600 square miles, and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation."

MR. deGRAFFENREID—Will the gentleman from Cullman permit me to make a statement, as he has made the motion to lay my resolution on the table?

MR. PARKER—Yes.

MR. deGRAFFENREID—The substitute simply leaves it as it now exists in the Constitution of 1875. The gentleman has made a motion to table my substitute, and on that I call for the ayes and noes.

THE PRESIDENT—The question is on the substitute of the gentleman from Hale to the minority report of the committee to Section 3 of the report of the Committee on State and County Boundaries, and the motion is to lay the substitute of the gentleman from Hale on the table. Is the call for the ayes and noes sustained?

The call for the ayes and noes was sustained.

The result of the roll call was as follows:

#### AYES

Messrs. President,	Grayson,	Parker (Cullman),
Bartlett,	Henderson,	Pearce,
Beavers,	Hinson,	Pettus,
Blackwell,	Hodges,	Pillans,
Boone,	Howell,	Porter,
Brooks,	Jenkins,	Rogers (Sumter),
Byars,	Jones, of Montgomery,	Samford,
Carmichael, of Coffee,	McMillan (Baldwin),	Sanford,
Cofer,	Malone,	Smith, Mac. A.,
Davis, of Etowah,	Martin,	Sorrell,
Eley,	Miller (Wilcox),	Spragins,
Eyster,	Murphree,	Studdard,
Gilmore,	Norman,	Thompson,
Glover,	Norwood,	Whiteside,
Grant,	Palmer,	Wilson (Washington),

TOTAL—45

## NOES

Ashcraft,	Foster,	O'Neill (Jefferson),
Banks,	Graham, of Talladega,	Opp,
Barefield,	Greer, of Perry,	Parker (Elmore),
Beddow,	Handley,	Phillips,
Browne,	Heflin, of Chambers,	Proctor,
Burns,	Heflin, of Randolph,	Robinson,
Cardon,	Hood,	Rogers (Lowndes),
Carnathon,	Howze,	Sanders,
Case,	Inge,	Smith (Mobile),
Cobb,	Kirk,	Stewart,
Coleman, of Walker,	Knight,	Waddell,
Cunningham,	Leigh,	Walker,
Davis, of DeKalb,	Macdonald,	Weakley,
Dent,	Maxwell,	Weatherly,
deGraffenreid,	Merrill,	Williams (Barbour),
Espy,	Miller (Marengo),	Williams (Marengo),
Ferguson,	Moody,	Winn,
Fletcher,	O'Neal (Lauderdale),	

TOTAL—53

## ABSENT OR NOT VOTING

Almon,	Jones, of Bibb,	Pitts,
Altman,	Jones, of Hale,	Reese,
Bethune,	Jones, of Wilcox,	Renfro,
Bulger,	King,	Reynolds (Chilton),
Burnett,	Kirkland,	Reynolds (Henry),
Carmichael, of Colbert,	Kyle,	Searcy,
Chapman,	Ledbetter,	Selheimer,
Coleman, of Greene,	Locklin,	Sentell,
Cornwall,	Lomax,	Sloan,
Craig,	Long (Butler),	Smith, Morgan M.,
Duke,	Long (Walker),	Sollie,
Fitts,	Lowe (Jefferson),	Spears,
Foshee,	Lowe (Lawrence),	Tayloe,
Freeman,	McMillan (Wilcox),	Vaughan,
Graham, of Montgomery,	Morrisette,	Watts,
Greer, of Calhoun,	Mulkey,	White,
Haley,	NeSmith,	Willet,
Harrison,	Oates,	Williams (Elmore),
Jackson,	O'Rear,	Wilson (Clarke),

During the roll call:

MR. ASHCRAFT—I am paired with Mr. Selheimer of Jefferson. If he were present he would vote no and I would vote aye.

MR. GREER (Calhoun)—I am paired with Mr. Almon; if he were here he would vote no and I would vote aye.

MR. HALEY—I am paired with Mr. Carmichael (Colbert); if he were here he would vote no, and I would vote aye.

MR. JONES (Bibb)—I am paired with the gentleman from Walker, Mr. Long; if he were present he would vote no and I would vote aye.

MR. McMILLAN (Wilcox)—I am paired with the gentleman from Dallas, Mr. Craig; if he were present he would vote no and I would vote aye.

MR. NESMITH—I am paired with the gentleman from Dallas, Mr. Vaughn; if he were present he would vote no and I would vote aye.

MR. WHITE (Jefferson)—I am paired with the gentleman from Jefferson, Mr. Cornwell; if he were present he would vote aye and I would vote no.

MR. HOWELL—I call for a verification of the vote.

The Secretary proceeded to verify the vote and had completed the call of those who voted aye.

MR. ROGERS (Sumter)—In the call the Secretary omitted the name of Mr. Pillans of Mobile.

THE SECRETARY—He did not vote, he is not in the house now.

MR. WADDELL—He voted aye.

MR. deGRAFFENREID—He did not vote.

MR. HOWELL—He voted aye.

MR. CUNNINGHAM—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. CUNNINGHAM—That upon the certification of a vote those who are absent cannot vote, only those who voted.

MR. SAMFORD (Pike)—I make the point of order in reply to that that before a vote has been announced that any gentleman has a right to register his vote or to change his vote.

THE PRESIDENT—That is undoubtedly true.

MR. WILLIAMS (Marengo)—I call attention to the fact that Mr. Pillans stood right there and he did not vote.

THE SECRETARY—I called his name twice.

MR. WADDELL—I rise to a question of personal privilege. I was paired with Mr. Pillans. I was standing in the lobby at the



time the vote commenced to be called. Mr. Pillans and myself walked into the hall together, and he said the pair is off, we will go in and vote. I took my seat and voted no and Mr. Pillans stood by the post and voted aye.

MR. HOWELL—When his name was called it was a very distinct aye, and I looked around to see who it was voting, and it was Mr. Pillans.

MR. WADDELL—If he did not vote, I am paired with him.

MR. HEFLIN (Chambers)—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. HEFLIN—The point of order is that when the verification of a vote is demanded no gentleman can change his vote, and gentlemen coming into the hall, who were not in the hall when the vote was being taken, cannot then vote.

THE PRESIDENT—The question which troubled the Chair was this: Mr. Pillans was in the hall when the vote was being taken. If he was present and actually voted, but is absent when the verification is called for, the question of difficulty with the Chair is how to ascertain when the vote, as recorded by the Secretary is challenged by members.

MR. ROGERS (Sumter)—I make the point of order, that the point of order of the gentleman from Chambers is not germane. It is not upon the question of voting absent men, but a man who was present and voted and is now absent, and here is a witness who came into the hall with Mr. Pillans, besides his fellow members from Mobile, who say that he voted aye, and several other members on the floor.

MR. WINN—I would state that Mr. Pillans came to my desk and expressed a doubt as to whether he had voted right, as he had voted aye.

THE PRESIDENT—The Secretary is directed to record Mr. Pillans as voting aye.

MR. PROCTOR (Jackson)—I rise to a point of order. The rule requires every member to vote from his seat. According to the testimony the gentleman did not vote from his seat.

THE PRESIDENT—The point of order comes too late.

At this point Mr. Pillans came into the hall.

THE PRESIDENT—Will the gentleman from Mobile please state whether he voted on the roll call?

MR. PILLANS—I did.

THE PRESIDENT—How did the gentleman vote?

MR. PILLANS—I voted aye.

THE PRESIDENT—The gentleman did vote when the roll was called.

MR. PILLANS—Yes, sir.

MR. ASHCRAFT—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. ASHCRAFT—I had the honor of obtaining the recognition of the Chair, but I did not get to conclude my remarks. On the call of the roll I announced that I was paired with Mr. Selheimer of Jefferson, who, if present, would vote no, and I would vote aye. I now desire to change my vote from aye to no.

THE PRESIDENT—Do you desire to disregard the pair?

MR. ASHCRAFT—I do not disregard the pair when I decide to vote with the gentleman with whom I am paired, and vote the same way.

THE PRESIDENT—How?

MR. ASHCRAFT—From Aye to no.

MR. GRAYSON—I rise to a point of order. Had the gentleman who is absent known that the gentleman would vote this way he would have paired with some one that would keep the pair, hence the gentleman has no right to vote.

MR. PETTUS—I make the point of order after a verification of the vote is demanded, it is not in order for gentlemen to change their votes or revoke a pair. The gentleman could not change his vote upon a verification.

MR. deGRAFFENREID—No demand was made from any member of this Convention for a verification—the verification was being done by the Clerk.

THE PRESIDENT—The gentleman from Cleburne demanded a verification.

MR. deGRAFFENREID—I did not know that.

THE PRESIDENT—The Chair is in doubt as to whether a delegate who is entitled to vote can change his vote after a verification is called for. The Chair desires to examine the rule with reference to gentlemen coming in and desiring to have their names recorded.

MR. OATES—The rule which prevails in Congress, and I suppose it is the highest parliamentary authority, no gentleman has a right to change his vote while the roll is being called, but after the roll call is completed, and before the result is announced, any one in the hall has a right to get up and change his vote or to be recorded if he has not voted.

THE PRESIDENT—Rule 35 is as follows: "When any question is taken by ayes and noes, and a delegate who has been absent returns before the question is decided, he shall be privileged to make inquiry of the subject before the Convention, and record his vote without discussion."

MR. OATES—That is substantially the same, if he comes in before the result is announced.

THE PRESIDENT—But the question here is the result has not been announced.

MR. OATES—I do not think any gentleman has a right to change during the verification, but after the vote is verified, and before the result is announced, anyone voting has a right to change.

THE PRESIDENT—Any time before the result is announced, any gentleman may change his vote from aye to no, and the point of order will be overruled. The gentleman votes no. Where a member has paired with another, they are on opposite sides, if he decides to vote on the same side with the gentleman with whom he is paired, the Chair sees no reason why he should not do so, since he is not violating the principle but in line with the way the absent member would have voted.

MR. SANDERS—May a delegate now change his vote.

THE PRESIDENT—Not while the noes are being called for verification, as soon as the noes are verified a member may change his vote.

After the verification.

MR. SANDERS—I desire to change my vote from aye to no.

THE PRESIDENT—The gentleman from Limestone desires to change his vote from aye to no. The Secretary will so enter.

MR. PETTUS—I rise to a point of order. The delegate can not change his vote on a verification. The object is not to give the delegate an opportunity to change his vote, but to see if they are recorded right in the first instance. I make the point of order that the gentleman from Limestone can not change his vote at this juncture.

**THE PRESIDENT** — The gentleman is correct; that the delegate can not change his vote while the vote is being verified, but after a verification of the vote and before the vote is announced, in the opinion of the Chair, any delegate may change his vote.

The result of the roll call was then announced, 45 ayes and 53 noes.

So the motion to table was lost.

**MR. deGRAFFENREID**—I move the adoption of the substitute and upon that I call for the previous question.

**MR. GREER** (Calhoun)—Does the gentleman move the previous question on the adoption of the article or just the substitute.

**MR. deGRAFFENREID**—On the adoption of the substitute that I offered.

**THE PRESIDENT**—The Chair will state to delegates that after a question is stated the Chair will pause a moment to give delegates an opportunity to rise and address the Chair. Right in the midst of a sentence, it is a little awkward to be interrupted, which makes it necessary to state the question several times. The gentleman from Hale moves the adoption of the substitute offered by him and upon that demands the previous question. The question is, shall the main question be put?

And upon a vote being taken the main question was ordered.

**MR. BLACKWELL**—And upon the adoption of the substitute I demand the ayes and noes.

**THE PRESIDENT**—The question is upon the adoption of the substitute, and upon that the ayes and noes are called. Is the demand sustained?

The call was sustained. The result of the roll call was as follows:

#### AYES

Ashcraft,	Davis, of DeKalb,	Hood,
Banks,	Dent,	Howell,
Barefield,	deGraffenreid,	Howze,
Beddow,	Espy,	Inge,
Brooks,	Ferguson,	Kirk,
Burns,	Fletcher,	Knight,
Cardon,	Foster,	Ledbetter,
Carnathon,	Graham, of Talladega,	Leigh,
Case,	Greer, of Perry,	Long, of Butler,
Cobb,	Handley,	Macdonald,
Coleman, of Walker,	Heflin, of Chambers,	Maxwell,
Cunningham,	Heflin, of Randolph,	Merrill,

Miller ( <b>Marengo</b> ),	Phillips,	Walker,
Moody,	Proctor,	Watts,
Oates,	Robinson,	Weakley,
O'Neal (Lauderdale),	Rogers (Lowndes),	Weatherly,
O'Neill, of Jefferson,	Sanders,	Williams (Barbour),
Opp,	Stewart,	Williams (Marengo),
Parker (Elmore),	Waddell,	Winn,

TOTAL—57

NOES

Messrs. President,	Grayson,	Parker (Cullman),
Bartlett,	Henderson,	Pearce,
Beavers,	Hinson,	Pettus,
Blackwell,	Hodges,	Porter,
Boone,	Jenkins,	Rogers (Sumter),
Byars,	Jones, of Montgomery,	Samford,
Carmichael, of Coffee,	McMillan, of Baldwin,	Sanford,
Cofer,	Malone,	Smith, Mac A.
Davis, of Etowah,	Martin,	Sorrell,
Eley,	Miller (Wilcox),	Spraggins,
Eyster,	Murphree,	Stoddard,
Gilmore,	Norman,	Thompson,
Glover,	Norwood,	Whiteside,
Grant,	Palmer,	Wilson (Washington),

TOTAL—42

ABSENT OR NOT VOTING

Almon,	Jackson,	Reese,
Altman,	Jones, of Bibb,	Renfro,
Bethune,	Jones, of Hale,	Reynolds (Chilton),
Browne,	Jones, of Wilcox,	Reynolds, of Henry,
Bulger,	King,	Searcy,
Burnett,	Kirkland,	Selheimer,
Carmichael, of Colbert,	Kyle,	Sentell,
Chapman,	Locklin,	Sloan,
Coleman, of Green,	Lomax,	Smith (Mobile),
Cornwall,	Long, of Walker,	Smith, Morgan M.
Craig,	Lowe, of Jefferson,	Sollie,
Duke,	Lowe, of Lawrence,	Spears,
Fitts,	McMillan (Wilcox),	Tayloe,
Foshee,	Morrisette,	Vaughn,
Freeman,	Mulkey,	White,
Graham, of Montgomery,	NeSmith,	Willet,
Greer, of Calhoun,	O'Rear,	Williams (Elmore),
Haley,	Pillans,	Wilson (Clarke),
Harrison,	Pitts,	

During roll call:

MR. GREER (Calhoun) I am paired with the gentleman from Lawrence, Mr. Altman. If he were present he would vote no.

MR. JONES (Bibb)—I am paired with the gentleman from Walker (Mr. Long) and if he were present he would vote aye and I vote no.

MR. McMILLAN—I am paired with the gentleman from Dallas (Mr. Craig) and if he were present he would vote aye and I vote no.

MR. WATTS—I do not understand the proposition. I just came in, what is the question?

THE PRESIDENT—The question is upon the adoption of the substitute proposed by the gentleman from Hale (Mr. deGraffenreid).

MR. WATTS—I ask to be excused from voting because I do not know what the question is.

MR. WHITE—I am paired with the gentleman from Jefferson (Mr. Cornwell) and if he were present he would vote no and I vote aye.

MR. O'NEAL—I object to the gentleman from Montgomery (Mr. Watts) being excused from voting. Under the rules, that cannot be done without unanimous consent.

THE PRESIDENT—Objection is made to the gentleman from Montgomery being excused from voting.

MR. WATTS—The gentleman from Montgomery is in no disposition to dodge any vote if he can understand the question before the Constitution.

THE PRESIDENT—The question is on the majority report as to Section 3 of the ordinance reported by the Committee on State and County Boundaries. The minority has offered a substitute to that and the gentleman from Hale (Mr. deGraffenreid) has offered a substitute for the substitute.

MR. WATTS—If I can be informed of what the substitute is as offered by the gentleman from Hale, I will vote.

THE PRESIDENT—The gentleman from Hale says that his substitute is to simply embody the provisions of the present Constitution of 1875.

MR. WATTS—I vote in favor of that substitute which ever way that may be.

MR. HOWELL—I desire to change my vote from no to aye. Having voted in the affirmative, I now give notice that I will move a reconsideration on Monday.

The result was then announced, 57 ayes and 42 noes, and the substitute offered by Mr. deGraffenreid was adopted.

MR. O'NEAL—I move that the rules be suspended and that we reconsider the vote by which this substitute was adopted for the purpose of laying that motion on the table.

MR. ROGERS (Sumter)—I make the point of order that a motion to reconsider the morning hour of the day preceding takes precedence over a motion to reconsider at once.

THE PRESIDENT—The Chair recognized the gentleman from Henry to offer an amendment.

MR. MALONE—I want to amend this Section 3 as adopted.

The Clerk then read the amendment as follows:

To amend Section 3 by adding thereto the words "provided that out of the counties of Henry, Dale and Geneva a new county may be formed under the provisions of this article for forming new counties so as to leave said counties of Henry, Dale and Geneva with not less than 500 square miles each."

MR. MALONE—I want to say a few words in behalf of the amendment and I will try not to take up too much of the time. If you will notice, the amendment is drawn so that while it is local and applies to no other section in Alabama, it is also drawn a fair straight proposition without any job or anything of that kind put upon the people at home. It is simply to permit those people down there in those three counties without affecting anybody else, if they desire under whatever provisions of law that may be made for forming new counties, without mapping out the county here, which I have every reason to believe our circumstances are strong we could have carried it through without attempting to draw the lines and leave this man out and that man in, and create no friction in the ratification of this Constitution, for I assure you that the only trouble that we have down there is that they all want to get in. Nobody want to be left out. The way this is drawn, it leaves it to those people alone to draw their lines without assuming any authority upon my part or this Convention or putting anybody in or out. Every place will feel that they have a chance to go in where they want to and will therefore favor the proposition.

MR. ROBINSON—Are the delegates from all those counties in favor of that proposition.

MR. MALONE—Practically so. I want to be thoroughly understood on that question. I don't want to mislead anybody. Mr. Kirkland of Dale and myself drew that resolution. Mr. Espy is here and Mr. Mulkey of Geneva, who has not been here for a week or two, has not seen that proposition.

MR. FOSTER—What are his politics?

MR. MALONE—While I do not like to refer to his politics, I like to go above that, but he has not seen it and his individual views I cannot answer for; but I can swear for the views of Geneva county as a whole, that the people of Geneva county are almost solid for this—I won't say absolutely solid. We had that issue at home, and that is this: everybody recognized that my part of the community almost had to have a new county, but we all agreed not to block but one. All we did was to let it be so situated that we might get one ourselves. Mr. Sollie was not here and I have not submitted that individual proposition to him. It has been my understanding, but of course he can speak for himself, that he would not at least antagonize the general proposition of five hundred square miles all over the State. That is my understanding. Now, as the Convention has seen fit not to adopt that, this comes in and lets it apply to our county so far as our county is concerned. Mr. Reynolds is not here, he is at least with us. It is fair to state that a great many in the upper end of his county, which is nine miles from the extreme upper end, and sixty from the lower end, are not all in favor of it. I made a canvass up there against the strongest man in Henry county and in that beat I got something like maybe 40 per cent. of the vote in his own beat, but not a majority. There were four candidates from the district. I carried every one of those counties against the four, and in my county where there was a primary, I got as many as all of them, notwithstanding the fact that I was from a profession that is not popular amongst the voters and was opposed to a very strong man. Mr. Espy announced the same position that he would not favor the Convention making an arbitrary county up there, but he would favor a reduction of the area in order that those people might settle that for themselves, and he got 90 per cent. of the votes of the entire county and carried every beat in the county. It was practically unanimous.

I hope you all will excuse me for referring to our local conditions just a little bit. We are from a section of country which developed very rapidly of late from the fact that it was not settled before. We have settled the country up there since the law taking the public lands from sale and putting them under homestead act went into effect. As a result every 160 acres and in a great many instances eighty and forty acres have been settled by some white man who in a great many instances had nothing else.

Now in the matter of courts, we already have three court houses in our county so that the matter of expenses in this regard would not be increased if there were three counties.

The gentleman from Elmore happened casually to show me one of his letters to which he has referred and it came from the Tax Collector of our county. The gentleman from Elmore did



not know that but I recognized the name and the Tax Collector, and the writer practically admits the proposition that it would not affect us in the rate of taxation although he resides twenty miles from any locality.

MR. PARKER (Elmore)—Will the gentleman allow me to ask him a question?

MR. MALONE—Yes.

MR. PARKER (Elmore)—I have in my hand what purports to be the proceedings of the Democratic Convention of your county.

MR. MALONE—I will get to that in a moment and shall be glad if he will call my attention to it so that I can explain it. I have no desire to avoid your questions, which I anticipate, I just want to get through on the other matters and then will come to that matter.

Now take into consideration the situation of our county. There are two counties that are shoe strings and right down in this section some of these people are twenty miles from their county sites and some over here are fifty or sixty and there are 35,000 in those counties, none of whom are closer than twenty miles from their county site. To be exact there are 32,125. Here one of the counties is fifty-five miles long and twelve miles wide and while from the west end of the county the people have to go thirty-five miles to the Court House, from the northeast corner they have to go thirty-five right through the country. There is no branch court or anything of the kind. In another county the length is sixty-five miles and the width sixteen or eighteen, and the county site now is nine miles from the upper end of the county and the lower end of the county have to go over fifty miles. People who can afford it and who live on the railroads can get on the train and by going out of the way can get to the county site but the common people have to go through the country to get to the Court House and if it is a little matter they just put up with it.

I have mentioned the Court House question and the expense and while I do not intend to say that everybody favors this, I do say that a great majority of the people favor it.

The time of the gentleman here expired, and on motion of Mr. White the rules were suspended and on the further motion of Mr. Sanford the time of the gentleman was extended ten minutes.

MR. MALONE—Now, as to the question brought up by the gentleman from Elmore as to the action of the County Convention.

MR. SAMFORD—That relates only to Henry County?

MR. MALONE—Yes, sir. In our county everything is nominated by the white primary. The Convention is supposed to have

little to do. This question is not supposed to come up in the County Convention, notwithstanding it was at issue so far as the delegates were concerned and the people expected when the delegates were elected that carried it with the population. Now, when we got to the County Convention at Headland, which is forty miles from the lower end of the county the real question was the selection of delegates to the State Convention. Now I shall have to go into district affairs just the least little bit. My friend Mr. Sollie was recognized as the wire grass candidate from that district. He carried the four counties and carried Barbour County. He was inclined to believe that there would be some danger of the Barbour delegation not carrying out in spirit as well as letter his instructions and while our county was also for the Hon. Jerry Williams of Barbour, we did not deem it best in view of all the facts to instruct for Mr. Williams when Mr. Sollie might need the wire grass counties to hold the other counties down. In accordance with that agreement the Chairman of the Convention, who was a partner of Mr. Espy and a friend of mine, agreed with us that a certain committee headed by Mr. Lee of Columbia should be appointed to select delegates to the State Convention. That agreement was made so that the friends of Mr. Williams could have proper representation although not to be instructed. For some unknown reason Mr. Lee was not put on that committee and that gave serious offense to Mr. Lee and his friends and they arose in the convention and stated they would not accept the positions to the convention. Now with that drawback operating against me I got 207 votes and the other man fifteen in the primary. Immediately upon that when more than half the delegates had gone home, notwithstanding I had a vote of 207 to 15, Mr. Lee moved to instruct the county delegates, of which I was one, against the reduction of the area, which was no doubt a hit at me, as he thought I had gone back on him. He afterwards expressed regret for doing that. The next beat below where the question of another new county was agitated where I got 71 to 5, one man representing the beat cast that beat against me. The lower beat where I got every vote but one or two was the same way. And so it was right along although the race had been made on that issue and the people were overwhelmingly for it. We have a population of 80,000 in the three counties. They are abundantly able to take care of themselves. One of the counties when it was organized only a few years ago had 2,900 inhabitants. Now it has 19,000. We have doubled in the last decade. If we were to attempt to move the records from Abbeville to Dothan there would be another section fifty miles from us, and you would not give any relief to the southeast corner of Dale or the east side of Geneva, which would be from thirty to thirty-five miles away.

I have explained to you that our people favor this movement almost solidly though I do not say all of them. Mr. Sollie is pres-

ent, and I have announced in his presence what I understand to be his position, and he will be able to speak for himself. Why Dale should object, I cannot see. The upper end of the county is willing to give away two or three beats and a few could be taken from Geneva and with our section of Henry there could be carved out a most prosperous and promising new county.

Now this substitute don't make the new county. All that my substitute does is to make possible the formation of that new county but it takes two-thirds vote of the legislature. Henry County will only have one Senator. Geneva and Dale will have two and the other counties will have three representatives to Henry's one so that you will see that the matter is practically left to our own people. We are asking a fair proposition. No job at all.

The average of the counties under my substitute would be 571 and the population would be 45,5000 in round figures.

Some of our commissioners go fifty miles to court. We haven't a tax collector in twenty miles nor a clerk. The result is that nobody knows anything about the wealth of our county. To give you an idea on that when I was on the City Council we sent a committee to Abbeville to raise the amount of assessed values in order that we might get more city taxes. Our assessed values were so very low, so entirely disproportionate to the real values, that we thought that was proper, but when we got there we found that we were paying so much more than anybody, that we came home without saying anything.

As a further illustration of this idea there are five banks in the county doing a fair business and they are paying tax only on \$5,000 on an average. One bank with \$50,000 capital is paying taxes on \$9,000 of property. The reason of this is that the sections are so far from the county seat that no one looks after it.

MR. ESPY—I did not intend to take any part in this debate until the matter of the resolution offered in the county convention of Henry County was adverted to before this Convention. When I announced as a candidate for a delegate to this Convention the people of Abbeville, where the county seat is located, desired to know my position with reference to the establishment of a new county. The impression seemed to be that the delegates from that county would make an effort to have this Convention itself establish a new county. In answer to that query I wrote a letter, in which I stated that I would take no step, or make no effort to have this convention establish a new county, but that I did desire that the people of Henry County should know my position, and that I favored a reduction of the constitutional area so that future legislatures might establish new counties. I went before the people of my county, they fully understanding my position and after a very spirited and heated contest where there were four

candidates, I received 90 per cent of the entire vote cast in my county. I received more than as many again votes as the two defeated candidates. I received nearly as many again votes as my colleague who was elected to this Convention. That being true, I myself am willing, after I have voted according to the resolution not to reduce the area of counties, to take the responsibility to support this amendment as offered by my colleague, Mr. Malone, and go back to my people. In addition to what he has already said with reference to the necessity of the establishment of a new county, we desire to say this, that we are living in a flourishing and progressive section of the country. The town we are in is but an index to the country surrounding it. In 1890 the census gave us a population of 200, in 1900, 3,275. As a matter of fact we now have in that town about 4,500 inhabitants by actual count. I mention this to show the progress of the country. This Convention has gone on and said they will not reduce the constitutional areas of the counties. If this amendment is not granted we stand with a constitutional barrier confronting us until another Convention is called, which is not likely to be called at least in twenty-five years. If the spirit of progress goes on for the next ten years the delegates to this Convention can readily see the deplorable condition that we will be in. Now in reference to the wishes of the people of Geneva County. I know not what the entire people think, but I do know that the people residing in the territory that will be sought to be incorporated in any new county hereafter to be established are almost unanimous that the new county be created. I do know that the same condition prevails to a certain extent as to the people of the eastern portion of Dale County also. Now we do not ask the Convention to establish a new county. Here is all we want: If you notice the reading of the amendment it says the legislatures, under the regulations of this provisions may in the future, establish that county. Now I submit to the Convention that if the people of those three counties do not want this county established in the future, they certainly will not have it. Why? Because when they go to elect their representatives, if they want to make it an issue and a majority is against it, the men who advocate it will go down in defeat, but if the people want it, the advocates of the new county will triumph. And when such a question comes up before the legislature, every fairminded man knows a legislature won't carve a county out of three other counties where the representatives of those counties are opposed to the proposition. So when you resolve this amendment to its last analysis, it means simply this: Remove the constitutional barriers so that out of these three counties a new county can be formed. We do not ask distinct regulation. We ask that it be fixed in such a manner that we can establish a new county and not be put in a position where that establishment can never be realized. The only thing we ask is to reduce the area of the three counties

so that we may form the fourth county. As it now stands we cannot form a new county out of these three counties and all four counties have 600 miles.

MR. SOLLIE—Mr. President and gentlemen of the Convention. Individually I would gladly see the town of Dothan relieved from an embarrassing situation. But I do not think the gentleman from Henry (Mr. Malone), who first addressed the Convention on the matter, is exactly correct in his understanding of the territorial location of the counties. For instance, I think Geneva county is more than twelve miles wide and I think Henry county is more than sixteen or seventeen miles wide. Whether I am correct in that I do not know except from my general acquaintance with the country.

MR. ROGERS (Sumter)—Geneva is not over twelve miles wide.

MR. SOLLIE—I feel sure it is.

MR. ROGERS (Sumter)—Here is the map with a scale and it is not over eleven miles.

MR. SOLLIE—I have gone across that county so much that I undertake to say Geneva county is more than twelve miles wide. It is fourteen miles from Dothan down to the postoffice where I live and ten or twelve miles down to the Florida line. My mother lived in the county twelve or fourteen years. My only effort at homesteading was in that county and I am so familiar with the county that the gentleman must be mistaken.

But getting away from the question of territory and the shape of the counties. I admit so far as Dothan is concerned, that that city needs relief, and individually I would be glad to see the relief granted. But I feel that I am not a proper person to take a direct and personal interest in the matter, because I represent eight counties and some of those and perhaps the majority are against the proposition to reduce the constitutional areas of counties. I feel if I am to vote for my constituency I would perhaps have to vote against the reduction as a general proposition and yet I thought Dothan should have the relief if the Convention wanted to reduce the areas and I was content to say nothing.

Our condition in Dale is this: If there were no trouble between Ozark and Newton, my county, except a small strip, would be unalterably opposed to any reduction of area. There is a little strip at the east end three or four miles wide that would like to be joined with Dothan in a new county, and for the reason that it would make them nearer the court house and it would be more convenient for them. But the other portions of Dale, apart from the court house proposition, are, I think, opposed to any reduction of the territory in Dale county.

But I do not profess to know positively as to the present condition of Dale, as to whether it is willing to see some of its territory taken or not. My law partner, Mr. Kirkland of Dale county, is not here. I have not conferred with him but I have supposed he would look after these matters and ascertain the wishes of Dale as to the reduction of the county area. But, as to making an exception in the Constitution of Dale, Henry and Geneva and carving out a new county, that proposition is new, it has never been mooted in my county. I am quite sure that Mr. Mulkey is opposed to the proposition. Some reference was made to his politics; but the people of Geneva—and a good many of them Democrats—sent him here so that I think he is properly the mouthpiece of that county.

When it comes to the county of Dale, Mr. Kirkland is the proper representative and I do not know his wishes. I understand that it is stated that this is satisfactory to him, but when he comes to thoroughly understand what the people of the county want, I do not know whether he will take that position or not. This is a new proposition. It is the proposition to make an exception of my county and two others.

Now, in regard to Henry county, I have been approached by a large number of citizens, some insisting that I stand by the action of the County Convention and saying that was the only authoritative body that has spoken and others taking the contrary position. Then in the light of the fact that Mr. Kirkland is not here and that Mr. Mulkey is absent as are also two of the representatives of the other counties that are to be affected by this and in view of the further fact that the representatives of Henry county stand, by the highest authority in the party, instructed against the reduction, notwithstanding I am in favor of giving relief to Dothan if it can be done consistently, I think it would be unwise for this Convention to act precipitately and hurriedly in carving a county out of these three counties without even consulting the wishes of those counties, that it would be unwise to make an exception in this case with the representatives of two of the counties absent and as far as I represent Henry county I must bow in humble obedience to the expressed will of the county convention of Henry county and vote against this proposition notwithstanding my desire to favor Dothan. I therefore move that the section to which this is an amendment, together with all amendments, be postponed for say six days. The reason for that is that the Circuit Court at Geneva is in session and there are six or seven capital cases and Mr. Mulkey is attending that court and I would like to have the matter postponed until he can return.

MR. PARKER (Cullman)—I move to lay that motion on the table.

MR. OATES—I will ask the gentleman to withdraw that motion.

MR. PARKER (Cullman)—I will if you will renew it.

MR. OATES—I will yield the floor to you so that you can make the motion.

Without any arrogance on my part, I say it, because it is a fact. I know more about this territory involved than any of these delegates, because I was acquainted with it before some of them were born and I have been all over it. I have been where the city of Dothan now stands when there was nothing there but the poplar spring and a little log grocery house. I never cast a vote anywhere in my life except in the good old county of Henry until the last two elections when I had become a citizen of Montgomery county and had changed my voting place to this city. I, too, have represented that county in the Legislature and I represented the Senatorial district which my brilliant young friend now represents in the Constitutional Convention of 1875, and I represented all of that territory in the Congress of the United States for fourteen years. I have attended court in each one of those counties. I was acquainted with that section before Geneva county had an existence. I know the people of that country very well and hence my desire to be heard upon this matter.

It is a mistake to suppose that Henry county is only twelve or fifteen or seventeen miles wide. It is upon an average more than twenty miles wide.

MR. MALONE—As a matter of fact I have here the township and range lines and there are three whole sections at the widest part and maybe at the bend of the river it might be eighteen miles.

MR. OATES—I understand it perfectly well. I have the good luck to own lands in all parts of the county. I know where the lines go and while it is true you may find some points that are as narrow as eighteen miles across owing to the crooks of the Chattahoochee River, the general average is more than twenty miles and the length about 69 miles.

MR. MALONE—The county is nearly rectangular and if it is twenty miles wide and sixty-nine long, that would give it 1,400 square miles and the county has not that many square miles in it.

MR. OATES—I am talking of the old county of Henry. You start in at the Florida line and to the upper part it is between sixty-five and seventy miles, and the average width is twenty miles.

MR. MALONE—It cannot be twenty miles with that length. That would make 1,400 square miles.

MR. OATES—I don't say it is over twenty miles all the way through. I say it would average that much, and I believe it will. That was before Geneva was made and before any of the county was taken off. At one time in the early history the counties of Dale, Geneva, Coffee and a good part of Barbour were all in Henry County, named for the grand old patriot and orator of Virginia. All of those counties have been carved off of it. The Court House was once located at a point either in Dale or near Coffee. It did not remain there long and was removed to Columbia on the river and remained there until it was changed to Abbeville, where it is now. I remember in 1859 the terrible contest the people of the county had upon the proposition to change the Court House from Abbeville to another point which was thirteen miles south of Abbeville in the piney woods. It went even to the extent of bloodshed before it was settled. It was a hardship for men to come from the lower end of the county fifty miles up to Abbeville and a branch court was established at Columbia and subsequently since the wonderful growth of Dothan and the development of that section another was established at Dothan.

Now a word about the instructions of the County Convention. I have heard the explanation of my friend the delegate from Henry as to how that occurred and I have not as much respect for instructions or platforms of conventions as I had when I was a young man. I know how such things are frequently procured, and unless it is a matter thoroughly discussed, well understood and fairly settled by the convention, it never has a great deal of weight with me, but I believe the motion made by the delegate from Dale (Mr. Sollie) to postpone this matter for five or six days, or until the other portions of this report are disposed of, should be carried. As he has stated that one of the delegates from Dale and the delegate from Geneva are not present, and I think that is a first class reason why a postponement should be had. The delegate from Geneva is doubtless trying to represent his people according to their wishes and is aware no doubt of one state of affairs in that county which has not been alluded to. And while that gentleman is of a different political faith from the most of us, I think he wants to do right so far as he understands it and he is not acting in a partisan sense. I know the eastern part of Geneva County some portions of which was taken from Henry, holds the balance of power and controls nominations and elections in the county and the people in the western end are more or less apprehensive of the growing strength of the eastern part and I know the western part would gladly give up that eastern slice to another county so that part could be nearer a county seat in a new county. That would remove all apprehensions of change in the county seat.

I have no objection to the proposition to carve out a new county from the three counties so that neither of them would be re-



duced below the 500 square miles and that the new county would contain 500 square miles, but before I can vote for the proposition I must see and know that no injustice will be done to any of those people and if a fair vote can be taken or otherwise their wishes can be ascertained before the new county is formed. I don't know what will be adopted by the Convention with reference to locating or forming new counties for that part we have not passed on and for that reason I favor the motion to postpone the further consideration until the conclusion of the article.

MR. MALONE—I now renew the motion of the Chairman of the Committee to lay the motion to postpone upon the table. This matter can come up on reconsideration Monday if it is desired, and there is no earthly use of delaying the matter, as Mr. Kirkland drew up the resolution with me.

A vote being taken on the motion to table, the motion to postpone was tabled by a vote of 75 ayes and 16 noes on division.

A viva voce vote being taken on the adoption of the gentleman from Henry (Mr. Malone), the same was carried.

MR. SOLLIE—I voted aye for the purpose of moving a reconsideration next Monday, and I now move a reconsideration of the vote by which it was adopted.

THE PRESIDENT — Under the rules that motion will lie over until Monday.

MR. MALONE—If it is in order I will move to suspend the rules and reconsider that now.

MR. SOLLIE—Before that motion is put I desire to say to this Convention—

MR. WADDELL—I rise to a point of order.

THE PRESIDENT—The gentleman will state his point of order.

MR. WADDELL—A motion to suspend the rules is not debatable.

THE PRESIDENT—The point of order is well taken.

A vote being taken the motion to suspend the rules was carried, the ayes being 63 and the noes 22 on division.

MR. ROGERS (Sumter)—I now move a reconsideration of the vote by which this Section was adopted, and I move to lay that motion on the table.

MR. SOLLIE—I do not think the gentleman can make that motion. He has not had the floor. The Chair recognized me.

THE PRESIDENT—The Chair had recognized the gentleman from Dale.

MR. SOLLIE—I had started to say——

MR. WADDELL—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman will state the inquiry.

MR. WADDELL—The gentleman who made the motion to suspend the rules was under the rules entitled to the floor.

THE PRESIDENT—The Chair knows of no rule to that effect.

MR. SOLLIE—I wish to say that I do not object or oppose Dothan being relieved by the formation of a new county if these three wire grass counties are willing for that to be done.

MR. ESPY—Mr. President, I would like to ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield?

MR. SOLLIE—No, sir; I prefer to get through my remarks if possible, but the gentleman may interrupt me at the end of eight minutes.

I realize that Henry County is badly situated and if practicable that it would be well to have a new county in the wire grass. But we have before us an article which will consume some days and here is a proposition not known to the people of the section, something in the nature of local legislation that is sprung upon the Convention by two delegates living in Dothan who get up and take advantage of a technicality in order to get the proposition to a vote and they would have this Convention of 155 members vote against a reduction in the area of counties of the State of Alabama for your sections and yet allow them in their section to have this resolution. And they do this in the absence of three out of four of the local representatives of the territory to which this substitute applies. And against the protest of one of the delegates they are undertaking to lay down the most extraordinary rule for this wire grass section, a rule that will not apply to any other part of the State.

MR. SAMFORD—Will the gentleman permit a question?

MR. SOLLIE—After eight minutes, I say it is not fair to the people of the wire grass, notwithstanding my friendliness to Dothan. The people of that town are my friends personally and politically, but notwithstanding that fact I conceive it to be fair that the representatives of this section should at least be given an opportunity to be here when a local measure bearing upon that territory alone is attempted to be put through, I think they should

be at least made aware that their interests are to be legislated against and should have their day in court here and that this Convention cannot in this case go ahead and consider this article in the absence of those delegates and when they have not been put upon notice of the fact. The gentlemen from Dothan have made a showing for their side of the contention and they have procured affirmative action by this Convention. I do not say that Dothan is not entitled to this relief, but I say if this Convention, against the protests of persons now present, with only a small house, sets this precedent of taking up a local situation and dealing with it in the absence of the representatives of that section, what assurance have any of you that some day in your absence the Convention will not take up some matter affecting your territory and settle it against your wishes? This is not doing what a Constitution should do, this is not making a Constitution for Alabama at large, but it is taking up a question affecting a certain section and in the absence of the representatives, or the most of the representatives of that section, disposing of the matter. I insist that the fair thing to do would be to reconsider this matter and pass it over until the delegates have an opportunity to be heard from. I say it is an extraordinary thing that an amendment should be sprung upon the floor of this Convention when perchance delegates happen to be absent and that amendment is railroaded through, the regular rules of procedure are suspended and the matter, which is an exception to the general rule is rushed through and settled beyond recall.

MR. SANFORD (Montgomery)—How long do you wish the section postponed?

MR. SOLLIE—To the end of the article so that the persons representing the territory may know that the amendment is before the Convention and may, if they wish, show cause why it should not be passed. If they don't we will then go ahead and act on it and then I shall be ready to act with these gentlemen, but until that is done I think it is unfair that the convention should take up a local situation and without hearing from the members representing that interest dispose of so important a matter. I trust you will not push this precipitate action upon the Convention, I trust that no exception to the ordinary procedure will be made as to this matter. Let the matter go over, let these gentlemen have notice and if they cannot show reasons why this action should not be taken, I will vote with these gentlemen, but I insist it is not right now to cut this matter off. I trust, gentlemen, will vote to reconsider the vote by which this amendment was passed, and postpone the matter and give opportunity for a hearing. To lay this motion to reconsider on the table is against the spirit of fairness, it is against precedent; it is extraordinary in its character that an amendment like this local in its character should be taken

up and passed in the absence of those who represent the interests affected.

MR. COLEMAN (Walker)—That does not propose to make a new county, does it?

MR. SOLLIE—No, sir; but you reduce the area so that the county can be made.

MR. COLEMAN (Walker)—If the people don't want it, it won't be made.

MR. SOLLIE—We don't want to have our case prejudged and a wrangle precipitated upon us. We want the right to pass in the first instance on the question of whether we shall have a local contest precipitated.

MR. ESPY—Is it not a fact that the people of these various counties will vote on the question and will also vote for representatives in the General Assembly and that their wishes can be made manifest then.

MR. SOLLIE—It is but we should not put a spur in the sides of the people goading on to them a local controversy.

MR. CARMICHAEL (Coffee) — I make no pretensions to oratorical or forensic ability and have thus far not inflicted upon the Convention any punishment in the way of a maiden effort. I am not a delegate from Dale, Geneva or Henry, but I do come from a county which touches upon Dale and Geneva, and I have taken considerable interest in the question of a new county with Dothan for a county seat, for the reason that I was born and reared in Dale county, that the closest ties bind me to Dale and for the further reason that, having frequently had business in the southern part of Dale, which would be in a new county if established, I know the feelings of the people of that section.

Last winter it happened that I was in Montgomery when there was a hard fight being made before the Committee on County Boundaries, as to the formation of a new county.

MR. SOLLIE—The question was not the formation of a new county but providing for a new court house.

MR. CARMICHAEL—I stand corrected. It was not as to the establishment of a new county, but it was practically taking the county seat from Ozark and putting it at Newton. I remember the gentleman himself argued that that would be practically the result. I do not think the gentleman will dispute that proposition. As I say, last winter I was at Montgomery during that contest and I examined at that time a large number of petitions sent from Dale against putting that new court house at Newton.

I am intimately associated with the people of Dale, and I come in close contact with them as I make frequent visits in a business and social way, and I can state that this is a live matter there within my knowledge. I am not so busy a man as the delegate from Dale and I say it, not in sarcasm but deliberately. I am said by friends to be of a talkative nature and I think I have seen more of the people in Dale county in the last six months than has the delegate from Dale himself, for in pursuance of business, I have traveled over nearly every beat soliciting subscriptions for my newspaper. I was there just before the fight in relation to the establishment of a coordinate court at Newton and just afterward, and the people were alive to the question. Why, men were traveling all over that section securing petitions and it was frequently said by the men who were caring for Ozark interest that as soon as the Constitutional Convention met that Dothan would have a new county and that they were going to have a new court house, and that would end the trouble. That was the principal argument used. The people of South Dale, with the exception of Newton, signed a petition against establishing a court house at Newton with the idea that there would soon be a new county and they wanted to be in it. The people of Ozark do not oppose this provision. Mr. Kirkland aided in drawing up this amendment. The delegate from Geneva (Mr. Mulkey) has not fought it. I state to this Convention that I traveled all over Geneva county last winter and I state the fact that this question was being discussed, and the people of Geneva are posted on it and they favor this amendment. The people of the west end favor it because it simplifies the whole situation by lessening to a great extent, if not removing entirely, any possibility of a row about the court house matter. The people of East Geneva favor it because it enables them more cheaply and easily to get to their court house to transact their business. That part of the county has a railroad running to Dothan which does not go on to Geneva, but stops eleven miles short and the people are thus not able to reach Geneva with anything like the ease they can Dothan.

As to the statement that this matter has not been agitated, the Dothan papers, than which there are no two papers in Alabama more widely circulated in that section or more ably edited, have, for a number of years, advocated the holding of a Constitutional Convention for the purpose, not of enabling them to secure a new county through ordinary channels, but of actually establishing a county by the Convention itself and the people of that section are expecting some such action from this body. My good friend from Dale is unduly exercised and I think if we reconsider this vote and postpone this matter, when he is properly advised, he himself will favor this proposition to enable a new county to be formed.

MR. SOLLIE—I think the gentleman's last statement is most probable, but does that militate against the proposition that this amendment should be known to the delegates who represent that section?

MR. CARMICHAEL—Mr. Kirkland of Dale and Mr. Mulkey of Geneva knew, as well as I did that this matter was coming up. They knew what the committee had reported and all about this matter. I do not arrogate to myself any superior intelligence, and I knew it, and they should be here and would be here fighting it if they objected to it. They have not been opposing it, they have not been going around mentioning it as they would if they were antagonistic to it. I have been in crowds where there was talk about it and they said nothing in opposition to it. Mr. President, I move the previous question on the motion to reconsider.

MR. SAMFORD—And a motion to table.

MR. CARMICHAEL (Coffee)—I move to lay the motion to reconsider on the table.

A vote being taken the motion to reconsider was tabled.

THE PRESIDENT—The question recurs on the substitute offered by the minority as amended.

A vote being taken the substitute as amended was adopted and a further vote being taken the section as amended by the adoption of the substitute was adopted.

MR. PARKER (Cullman)—I move the adoption of section 2.

MR. HOWZE—I would like to ask the Chairman a question as to section 2, whether it affects or conflicts with any litigation pending now?

MR. PARKER (Cullman)—None that I know of.

THE PRESIDENT—The Secretary will read section 2.

Section 2 was read as follows: Section 2. The boundaries of the several counties as they now exist are hereby ratified and confirmed.

A vote being taken section 2 was adopted.

Section 4 was then read as follows:

Sec. 4. The General Assembly shall have power, provided that each house, by a majority of its members, elected thereto, shall vote in favor thereof to submit to a vote of the people within the boundaries of the proposed new county, the creation and formation of new counties, but no new county shall be created, unless such proposed new county shall receive two-thirds of the votes of the qualified electors, voting at such election; and at the

same time the question of a name and a county seat for such county shall be submitted to and determined by said electors; and, provided, that no new county shall be created or formed of less extent than five hundred square miles, and which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its creation and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation, or which shall reduce any old county below five hundred square miles.

MR. COBB—I rise to a parliamentary inquiry. The action of the Convention just had utterly destroys this section 4. If you pass section 4 there will be an irreconcilable conflict between what you have done and what is proposed to be done—what are you going to do about it?

THE PRESIDENT—The Chair is not going to do anything except such motions as may be made to the Convention.

MR. COBB—Then I move to lay section 4 on the table.

THE PRESIDENT—The Secretary is not through reading the section yet.

The minority report was read as follows:

#### MINORITY REPORT

The undersigned member of the Committee on State and County Boundaries does not concur in the report of the Committee as to Sections 2, 3 and 4, and he offers as substitute therefor the following:

Section 3. The boundaries of the several counties of this State as heretofore established by law, are hereby ratified and confirmed. The General Assembly may by a vote of two-thirds of both Houses thereof arrange and designate boundaries or the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new counties shall be hereafter formed of less extent than six hundred square miles and no existing county shall be reduced to less than six hundred square miles; and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation.

Respectfully submitted,

Milo Moody,

C. H. Miller.

MR. COBB—If you will allow me just a moment I will explain the situation.

THE PRESIDENT—Does the gentleman withdraw his motion to table?

MR. COBB—For the present.

THE PRESIDENT—A motion to table is not debatable. The gentleman applies the gag himself.

MR. COBB—I will take it all back, and withdraw it. That is if I make a contract with the Chair to be recognized.

MR. SANFORD (Montgomery)—I ask a matter of inquiry, for information, can I now offer a substitute to Section 4 of the report of the committee?

THE PRESIDENT—The Chair will state for the information of the gentleman from Montgomery that the gentleman from Macon has the floor, and if the gentleman can get him off the floor, and get in his amendment, before he moves to table, he will have a chance.

MR. SANFORD—What do you say to it?

MR. COBB—Put it in there and I'll see. I will let him put it in.

The substitute was read as follows:

"Substitute to Section 4 of the report of the Committee on State and County Boundaries—

THE PRESIDENT—The Chair will state to the gentleman from Montgomery, that there is already pending a substitute for Section 4, and to be in order the gentleman will have to shape his substitute so as to be a substitute for the pending substitute and the article.

MR. SANFORD—I will put it in that manner.

The reading of the substitute was continued.

"Substitute to Section 4 of the report of the committee, and the pending substitute by the minority Committee on State and County Boundaries, Section 4. The General Assembly shall have power to create new counties, provided that no county shall contain within its limits less than four hundred square miles, or a less number of inhabitants than would entitle it to one representative, according to the ration of representation existing at the time of its creation; and provided further, that no county from which any territory may be taken shall be reduced to an area of less than four hundred square miles, nor shall the population of such county be so diminished as to take away from it all of its representatives."



Mr. Sanford sought recognition.

MR. COBB—I only yielded for the reading of that.

MR. SANFORD—I have offered that, Mr. President----

MR. COBB—There is a "pint" of order.

MR. SANFORD--If I have the floor I would like to give the reasons for offering it.

MR. COBB I had the floor and yielded for the reading----

MR. SANFORD Yes. I offered it, Mr. President----

MR. COBB--Go on.

MR. SANFORD (Montgomery)---Because while the 4th section from a general reading of it intimates that it favors the formation of new counties, it is absolutely impracticable under that section to form a new county. There seems to be an impression that the people have a right to vote upon new counties. It is a thing unheard of in the history of Alabama. Alabama's first county was formed in 1800, before Alabama and Mississippi were ceded by Georgia to the United States. The county of Washington was formed. Its propriety, its limits, its purposes were never submitted to a vote of the people, nor was there any county submitted to the people for their approbation from that time down to the present in the history of Alabama. In 1819 there were twenty-seven counties. Not one of them was ever submitted to a vote of the people. In 1821 Pickens county was formed. In 1824 Walker county was formed, and thus many were formed until in 1832 nine counties were formed, not one of which was ever submitted to the approval of the people. Since 1865 eight or nine new counties have been formed, including Cullman county in 1877, and not one of them was ever submitted for the approbation of the people. So that a vote of two-thirds is against the history of Alabama, for the people to say whether a county shall exist or not.

Let me say to the Convention that counties are political subdivisions, formed for the use and benefit of the State. The advantage to the people is an incident to it. It forms these counties so that its laws can be better enforced, and its taxes can be better collected, lynching can be better prevented, and everything considered, it is for the advantage of the State that counties should be formed, for the smaller the county the more effective is the enforcement of its laws. The more secure are the people in their lives, liberty and property. Now, Mr. President, I have advocated and do advocate counties of not less than four hundred square miles because it would lead to the establishment of many new towns. It would lead to the construction of many railroads. It would afford markets for the products of the various plantations which do not now exist. An area of four hundred square miles

will give to every citizen that is farthest from the center, a market town distant only fourteen miles, which will enable him, as the gentleman from Washington said yesterday, to go and return to his home almost between sun and sun. It would add to the enlightenment of the people, as the gentleman from Cleburne says. Schools would spring up, and churches would be built. Jails would be established, as an object lesson for the lawless. Even a gallows would be erected possibly, that would have more effect in restraining the vicious element of mankind than the commandment which says thou shalt not kill. These are the influences. You have markets for your green meats, for your vegetable products and your domestic manufactures. Why, in Georgia, and I refer to Georgia because I think most of my friends here are natives of that great State, they have so many small counties that I have seen so trifling a thing as the manufacture of woolen cordage by old ladies taken to the towns where they receive the market price for their products, so that it is even an advantage to the people in that particular. It calls the people closer together. They become more civilized, not merely because of the number of schools, but by intercourse. Why it was said by a very great man that no question of importance to civilization passed in Europe until it passed in France, and France owes it to the fact that her people mingle closely together, and their enlightenment is advanced by their conversational opportunities. These are philosophical principles, and Alabama should have the benefit of them. I have mentioned this fact to show that when you bring the people together in small communities, how factories spring up. In a little town in the North of England, where the weavers lived, they were bankrupt and poor, suffering for the necessities of life, when twenty-eight men combined to contribute 4 cents a week, and raised in that manner, after a while, \$140. It was invested in a department store. In sixteen years that \$140 had increased to \$600,000 worth of taxable property for the State. So we bring these people together. They form combinations, they establish department stores and factories, and they become wealthy. Alabama can reduce its rate of taxation, by the general prosperity of the people, and when you consider all of the facts connected with these things, why it seems to me that the substitute or amendment which I have offered ought to be adopted.

Over in Georgia one county has an area of only ninety square miles, but the largest county has 1,145 square miles. The average in Georgia is 430 square miles to the county. In Tennessee it is 400 square miles to the county, and why should Alabama not have the same for her counties? It was said yesterday in 1800 they had 900 square miles, and in 1868 they had 600 square miles, and thirty-six years after they want to have 400.

THE PRESIDENT—The gentleman's time has expired.

MR. O'NEAL (Lauderdale)—Will the gentleman allow a question before he takes his seat.

MR. COBB—I yielded to my learned friend from Montgomery when I really had the floor, but he has made a speech utterly oblivious of the fact that everything he said is already *res adjudicata* in this Convention.

MR. SANFORD—Four hundred square miles shall be the area?

MR. COBB—Yes we have settled that question.

MR. SANFORD—That 400 square miles shall be the area?

MR. COBB—Shall not be.

MR. SANFORD—Let me suggest to the gentleman that the Article is not complete yet.

MR. COBB—It has been adopted.

MR. SANFORD—Only *protempore*, and there is a committee here to reconcile inconsistencies, if there should be any.

MR. COBB—Well, make your speech before the Committee, it is not exactly in order here.

Now I simply want to call the attention of the delegates for one moment to the situation of this matter. The Committee on County Boundaries have three several reports here, the majority report, and two minority reports. As a substitute for one of the minority reports, this Convention has acted by adopting the old Constitution as it stood and now stands. That provision thus adopted covers all the questions about new counties as well as the changing of boundary lines of the old counties. So it is a matter fixed by this Convention that we will not change the boundary lines of the old counties, so as to reduce any county below 600 square miles. That has been adopted, and there is a motion pending to reconsider it. That is the situation. Now in view of that fact, Mr. President, I move to lay upon the table——

MR. OATES—Will the learned gentleman tell me what is meant by the "ratio of representation existing at the time of the creation of the new counties?" What is the ratio of representation?

MR. COBB—Where do you read that?

MR. OATES—In the ninth and tenth line of the Fourth Section.

MR. COBB—That has been the law in Alabama for twenty-six years.

MR. OATES—But what is it?

MR. COBB—I have never had my attention called to it.

MR. ROBINSON—About 18,000 population.

MR. COBB—"But no existing county shall be reduced to less than 600 square miles and no county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation." Well, now at the time of the formation of the Constitution, Alabama had a ratio of representation of one for so many inhabitants.

MR. OATES—I do not think my learned friend has quite understood the question I asked. As I see it, there is no fixed ratio at all. It is provided that every county shall have one representative in all constitutions. Now as the population changes, I suppose dividing the whole population by the number of representatives, we see how many thousand we have in that way. Is that what is meant by ratio, or how do you get it?

MR. COBB—I will explain, but I did not think that a matter that was in the Constitution for twenty-six years needed any particular explanation.

MR. OATES—Some old things are not well understood.

MR. COBB—But I will explain my view of it. The Legislature of the State of Alabama from time to time establishes the ratio of representation to the General Assembly. That ratio is generally, one certainly from each county, and then one for every certain number of inhabitants. I believe that is the way that it is.

MR. HOWZE—I make a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. COBB—I won't yield for that.

MR. HOWZE—We are all interested in this discussion upon the question of ratio, but I make the point of order that the Article the gentleman is speaking to has been disposed of in passing the substitute offered in the report submitted by the gentleman from Hale. It seems to me when the Convention adopted that substitute it disposed of the subject matter of the Article to which the gentleman is speaking.

MR. COBB—I am not speaking to that Article, but to the other articles, which I propose to lay on the table directly.

MR. HOWZE—That is the very Article that the gentleman is speaking to. The one he proposes to lay on the table, and it is embraced in the Article we have already passed.

MR. COBB—The gentleman is entirely mistaken. I am not off the track very far. I simply wanted the members of this Convention to understand exactly what they were called upon to do.

MR. ROBINSON—If the gentleman will allow a question. Section 2 in the old Constitution was divided by this majority report into three sections.

MR. COBB—Yes sir.

MR. ROBINSON—And we have adopted the old Constitution, which disposed of Section 2, 3 and 4.

MR. COBB—Of course, and I am going to lay them on the table, if the gentleman will allow me to have time to do it. But, I was simply trying to get the matter as it exists properly understood by the delegates.

THE PRESIDENT—The gentleman from Macon moved to lay upon the table Section 4, and the motion was never withdrawn by the consent of the Convention. The Chair omitted to ask unanimous consent for the gentleman from Macon to withdraw his motion to table. The question would be whether the gentleman from Macon shall have unanimous consent to withdraw his motion to table.

To which objection was made.

Mr. Cobb sought recognition.

THE PRESIDENT—A motion to table is not debatable.

MR. COBB—But I have not made it yet. I made a contract with the chair right there—

THE PRESIDENT—The gentleman made a motion to table—

MR. COBB—And withdrew it for my learned friend here to make a talk.

THE PRESIDENT—The gentleman could not withdraw his motion to table, except by unanimous consent.

MR. COBB—Then I will renew it. I won't talk any more.

THE PRESIDENT—The Convention refused to give unanimous consent to its withdrawal—

MR. COBB—I won't talk any more. (Laughter.?)

THE PRESIDENT—The question is on the motion to table section 4.

MR. COBB—There is something more than that. Mr. Speaker you have not covered the whole matter. It is not only section 4, but section 2 and 3 as made by the minority report.

THE PRESIDENT—If the gentleman will confine his motion to table to the substitute to section 4, and the section, we will take up the other matter in a moment.

MR. COBB—Yes, sir.

THE PRESIDENT—The motion is to table the substitute to section 4, and section 4.

Upon a vote being taken, the section and substitute were laid upon the table.

MR. SANFORD (Montgomery)—I give notice of reconsideration for Monday.

THE PRESIDENT—The chair will state that the journal is not in a very satisfactory condition with reference to section 2 and 3.

MR. COBB—I am coming to that right now—

THE PRESIDENT—Let the chair make a suggestion as to that. As to section three there was a substitute pending, and thereupon the gentleman from Hale moved a substitute for that, which was adopted. That substitute was then adopted as an amendment to section 3, and as to section 3 it seems that the minority report as changed by the amendment offered by the gentleman from Hale has been adopted—

MR. COBB—And that puts out—

THE PRESIDENT—Section 3. Now as to section 2, the Convention has adopted section 2, without consideration of a pending substitute for section 2. That pending substitute, however, was identical with section 2 as adopted, but in order to get the record straight, it seems to the chair that the vote whereby section 2 was adopted should be reconsidered and that the substitute for section 2 should be laid upon the table, or disposed of in some way, and then Section 2 adopted.

MR. COBB—Won't it do to lay Section 2 as it appears in this majority report on the table?

THE PRESIDENT—That will not do because the Convention should not have proceeded to adopt section 2, and ignored the pending substitute for it.

MR. COBB—Then I move to reconsider it for that purpose.

The motion to reconsider the vote whereby section 2 was adopted was carried.

MR. PARKER (Cullman)—I move that the substitute as offered by the minority of the committee to section 2, be laid upon the table.

And the motion to table was carried.

MR. PARKER (Cullman)—I now move the adoption of section 2.

The motion was carried.

MR. COBB—Now, then, the next section.

Section 5 was read as follows:

"No county lines shall be altered or changed or in the creation of new counties shall be established so as to run within seven miles of the county court house of any old county."

MR. COBB—I move to lay the section on the table.

MR. PARKER (Cullman)—That section is a new section, and was put there as a safeguard as to old counties, and I hope and trust that the Convention will adopt that section and I move its adoption.

THE PRESIDENT—The gentleman from Cullman moves the adoption of the section as read.

MR. O'NEAL—I move the previous question on that.

MR. SAMFORD (Pike)—I move to lay it on the table.

MR. WILSON (Washington)—I call for an aye and no vote on that.

The requisite number failing to rise, the call was not sustained.

Upon a vote being taken, the Convention refused to table the section.

THE PRESIDENT—The question recurs upon Section 5.

MR. CUNNINGHAM—I move the previous question.

The main question was ordered, and upon a vote being taken, the section was adopted.

MR. COBB—The next section that we reach will create a great deal of controversy, and I move that this Convention do now adjourn.

MR. NORWOOD—Will the gentleman withdraw for a moment in order that I may send up a petition?

MR. COBB—Yes, sir.

MR. NORWOOD—I move that the petition be read.

MR. COBB—I move that it be received without being read, and published in the official report.

And referred to the proper committee.

Upon a vote being taken, the motion, as amended, prevailed, and the petition is as follows:

Petition from the Baptist Ministers' Institute at Anniston, to the Alabama State Constitutional Convention:

Anniston, Ala., June 28th, 1901.

Whereas, The doctrine of soul liberty, not only for themselves, but for all men everywhere has been one of the fundamental principles of the Baptist people throughout their entire history, a doctrine for the establishment and maintenance of which our fathers spared neither their property nor their lives; and,

Whereas, The actual membership of the white Baptist Churches in Alabama amounts to more than one hundred and thirty thousand (130,000) souls, representing not less than one-half of the white family life in the State; and,

Whereas, Many other citizens in Alabama of all faiths and of no religious connection, believe in the above mentioned principle of complete separation between the church and State; and,

Whereas, If instead of this vast number, only a few of the people should claim the right of absolute religious freedom, they would still be entitled to its blessings, therefore be it

Resolved, by the Baptist Ministers' Institute, now in session at Anniston, Ala., that in the name of all parties concerned we do now most earnestly and respectfully petition the honorable members of the Alabama State Constitutional Convention, now recasting the organic laws of our State, to make the clause guaranteeing freedom of religion and the absolute separation of church and State, so clear that it will be impossible for any to misunderstand its provisions, and that public funds cannot under any circumstances be appropriated to any kind of ecclesiastical institution, thereby infringing on the rights and violating the conscience of a free people.

Resolved, further, That a committee consisting of L. O. Dawson, Charles A. Stakely and W. B. Crumpton, be appointed by this Institute to forward these resolutions to the Convention now in session at Montgomery, with the assurance that sincere prayer is made to God by the ministers in attendance upon the Institute in behalf of the members of the Convention that they may be divinely guided both individually and collectively, in the great and important task of framing a new Constitution for our beloved State.

Referred to the Committee on Legislative Department.

MR. OATES—I wish to offer a short resolution.



MR. COBB—I move to adjourn.

MR. OATES—I desire to offer a resolution in regard to pairs, for reference to the Committee on Rules.

MR. BURNS—I want to offer a short resolution in reference to adjournment.

MR. SANFORD—I gave notice awhile ago that I would move a reconsideration of the vote whereby Section 4 was laid on the table.

THE PRESIDENT—The chair recognized the gentleman from Macon. Does the gentleman yield to the gentleman from Dallas?

MR. COBB—I would have to know what it is before I yield.

The resolution offered by Mr. Oates (Montgomery) was read as follows: "Resolved, That pairs shall be put in writing and filed with the secretary of the Convention, who shall, at the close of the roll call read the same."

Referred to the Committee on Rules.

MR. COBB—I yield to the gentleman from Dallas for a moment.

MR. BURNS—I sent my resolution up there by a page.

MR. O'NEAL (Lauderdale)—I move that we do now adjourn.

Upon a vote being taken, the Convention adjourned.

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## FORTY-FIFTH DAY

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MONTGOMERY, ALA.,

Monday, July 15, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. McDaniels, as follows:

Almighty God, we would begin this day in Thy strength. Thou dost love us. Thou didst so love the world as to give Thine only begotten Son. Thou didst give the Lord Jesus Christ, as a propitiation for our sins, and not for our sins only, but for the sins of the whole world. We pray Thy richest blessings to rest upon this Assembly. Bless them in every department of their work. We commend one another to Thy tender love. We would remember

our loved ones at home, the sick, the dispirited and the disquieted. To the weary wouldst Thou give rest. Bless us in all of our deliberations this day, and ultimately save us through the merits of our Lord and Savior Jesus Christ, Amen.

Upon the call of the roll, eighty-seven delegates responded to their names.

Leaves of absence were granted to the following: Mr. McMillan (Wilcox) for today and tomorrow; Mr. Hood for today; Mr. Ferguson for today; Mr. Pillans for today; Mr. Carmichael (Colbert) for today; Mr. Eyster for today; Mr. Haley for today; Mr. Jenkins and Mr. Lowe (Lawrence) indefinite leave on account of sickness.

The report of the Committee on Journal for the forty-fourth day of the Convention had been examined and found to be correct, and the same was adopted.

THE PRESIDENT—The special order for this hour will be the consideration of the motion for reconsideration.

MR. HOWELL—I announced on Saturday I would move a reconsideration this morning of the vote by which the substitute of the gentleman from Hale (Mr. deGraffenreid) was adopted, retaining the provisions of the present Constitution as to the area of square miles in the counties. I did not do that to resort to any dilatory tactics to consume time, but owing to the small House we had on Saturday I thought it would be proper that this matter should be settled this morning, if we could get the reconsideration, was to offer an amendment to sustain the majority report of the committee for five hundred square miles.

THE PRESIDENT—The motion is to reconsider what section?

MR. PARKER (Cullman)—The substitute for section three.

THE PRESIDENT—What is the substitute the gentleman desires reconsidered?

MR. HOWELL—It is the substitute offered by Mr. deGraffenreid, and adopted, to section three.

THE PRESIDENT—Does the gentleman desire to discuss it further?

MR. HOWELL—I suppose it will not provoke any discussion. This question has been discussed at length, and while a very respectable minority of the House would prefer a reduction to four hundred square miles, that is settled; but we believe possibly that a majority would favor the majority report of the committee that recommended the reduction to five hundred square miles, and the minority square miles will be satisfied with the vote on that ques-

tion this morning. I have no disposition to discuss it. In my judgment this question has been discussed fully and everybody's mind it made up on the question I suppose. So far as I am concerned, I am satisfied with the present discussion and will not discuss it further.

MR. MOODY—I move to table the motion to reconsider.

MR. PARKER (Elmore)—On that I call for the ayes and noes.

The call not being sustained, a vote was taken, and a division called for, which resulted in a vote of fifty ayes and thirty noes and the motion to take was carried.

MR. deGRAFFENREID—I rise to a question of personal privilege.

THE PRESIDENT—The gentleman will state the question of privilege.

MR. deGRAFFENREID—The substitute which was adopted by the House for section three, has been referred to as a substitute which was offered by me. It is a matter of some importance and I desire to say that the substitute was simply the minority report of Mr. Milo Moody and Mr. C. H. Miller, to the majority report. I did not want to be credited with the matter, because those gentlemen are entitled to it. I made the motion at the request of Mr. Miller, and conducted the fight for that amendment at his request.

THE PRESIDENT—The present order will be the call of the roll of delegates for the introduction of resolutions, ordinances, etc.

MR. SANFORD—There is a motion to reconsider after the one just before the House, the motion I made to reconsider Section 4. I merely desire to call the attention of the House to the matter.

THE PRESIDENT—The question will be upon a motion to reconsider the vote whereby this Convention adopted Section 4.

MR. SANFORD (Montgomery)—It was laid on the table.

THE PRESIDENT—The Chair will state to the distinguished gentleman from Montgomery, that in the opinion of the Chair, a motion to reconsider is not in order, where a section has been laid on the table. The proper motion, if the gentlemen will permit the Chair to suggest, would be a motion to take from the table.

MR. SANFORD—I make that motion. I move Mr. President and gentleman of the Convention that section four, and its substitute, which was tabled on last Saturday, be taken from the table for further consideration and passage. It am aware that the Con-

vention seems to be in favor of retaining the area of 600 square miles—

MR. REESE—I make the point of order that the motion is not debatable.

MR. SANFORD (Montgomery)—I cannot hear what the gentleman says.

THE PRESIDENT—The point of order made by the gentleman from Dallas is that a motion to take from the table, like a motion to lay upon the table, is not debatable.

MR. SANFORD (Montgomery)—Then by my ignorance of parliamentary tactics, I have been fairly trapped. I move to reconsider the action of the Convention on Section 4 on Saturday this morning, and I am told that is not the order, but it should be to take from the table, and when I make a motion in accordance with the suggestion of the President I am told that it is not debatable. I do not think that is just. Pardon me for differing from so learned a gentleman, but it seems to me it works an injustice.

THE PRESIDENT—The gentleman can renew the motion to reconsider if he prefers.

MR. SANFORD—I renew the motion to reconsider.

THE PRESIDENT—The chair will rule the motion out of order as it is not in order to move to reconsider something which the Convention has laid upon the table.

MR. SANFORD—Then if I move to take it from the table that is not debatable?

THE PRESIDENT—That is true.

MR. REESE—I rise to the point of order that the report of the committee is not at this time before the House.

MR. SOLLIE—I rise to a question of personal privilege. In the stenographic report of last Saturday's proceedings I am credited with stating that I live now in Geneva county. I do not know whether that is my mistake or the mistake of the stenographer, but whichever it may be, it is one and I would be glad to have it corrected, because I live in Dale county. I used to live in Geneva county, but do not live there now.

THE PRESIDENT—The stenographers will take note of the correction of the gentleman from Dale. The secretary will call the roll of delegates for the introduction of ordinances, resolutions, etc.

Mr. Brooks of Mobile offered the following resolution, No. 245:

Resolved, That it is the sense of this Convention that all discussions relating to the amendment and revision of the Constitution should be free from caucus dictation operating upon the judgment and conscience of the delegates; that the proper forum of such discussions is the Convention, and that the proper method of giving effect to the wishes and interests of the people through the Convention is by the free and unrestricted action of their individual representatives in Convention assembled.

MR. BROOKS—I move a suspension of the rules, Mr. President, so that the resolution may be put upon its passage.

Upon a vote being taken, a division was called for.

MR. BROOKS—If I am in order I would like to have the resolution read again as some gentlemen did not hear it.

MR. HEFLIN (Chambers)—I object, Mr. President. The vote has been put and I rise to the point of order that it would be out of order to reconsider the resolution at this time, a division having been called for.

THE PRESIDENT—It seems to the chair that it would be in order to have the secretary read the resolution.

The resolution was again read.

MR. REESE—I move to lay the resolution upon the—

THE PRESIDENT—The question is upon the suspension of the rules.

MR. REESE—I make a point of order.

THE PRESIDENT—The question is upon the suspension of the rules—

MR. REESE—That resolution is not germane to any matter before this Convention, and the gentleman ought not to be offering it here.

THE PRESIDENT—In the opinion of the chair the point of order is not well taken.

By a vote of 31 ayes to 37 noes the Convention refused to suspend the rules, and the resolution was referred to the Committee on Rules.

Ordinance No. 420, by Mr. Burns:

An Ordinance—

The General Assembly or Legislature shall enact laws for the purpose of effectually enforcing the lien of agricultural, mechanical and railroad employees upon the products of their manual labor.

Referred to the Committee on Legislative Department.

Upon the call of the standing committees:

MR. HEFLIN (Randolph)—I am directed by the Committee on Schedule, Printing and Incidental Expenses to report back to the Convention resolution 219 without recommendation.

The resolution was read as follows:

Resolution No. 219, by Mr. Beddow of Jefferson:

Whereas, various resolutions have been adopted throughout the State requesting that this Convention patronize union labor by having its printing done by members of the Typographical union, and that the union label be printed thereon, and

Whereas the union of labor should be encouraged by the people of Alabama in Convention assembled.

Therefore be it

Resolved, That the Committee on Schedule, Printing and Incidental Expenses be and they are hereby instructed to patronize the printing establishments having in their employment union labor and have the union label printed thereon.

MR. HEFLIN (Randolph)—I just want to say to the Convention that a number of gentlemen appeared before the committee in favor of this resolution and explained its object and purpose. I will also say to the Convention that the Committee has already contracted with the Brown Printing Company, Montgomery, to do all the printing of this Convention, with the exception of the Journal, and we explained that to the committee who came before us. They have numerous petitions here in favor of the resolution, and also some petitions against the resolution. We stated to the gentlemen we had already contracted, and they then said to us that they did not expect us to break the contract, but they wanted the label placed on all printed matter done by this Convention. Now I desire to give my time to the gentleman from Jefferson, Mr. Beddow.

MR. SAMFORD (Pike)—I rise to a point of information.

THE PRESIDENT—The gentleman will state the point of information.

MR. SAMFORD—Is it in order to consider this report now? That is merely the report of a committee, and the rules of the Convention are that reports of committees shall lie over and be printed, and be taken up in their regular order.

THE PRESIDENT—That applies to ordinances, but not to resolutions, where a committee reports resolutions.

MR. SAMFORD—I understand that to be the rule when it is reported by the Committees on Rules, this is a standing committee of a different nature entirely.

THE PRESIDENT—It seems to the chair that the resolution goes upon the calendar and be taken up when that order of business is reached.

MR. SAMFORD—Then I make the point of order that the consideration of this report is now out of order.

MR. BEDDOW—I rise to a point of parliamentary inquiry.

THE PRESIDENT—The gentleman will state his point of parliamentary inquiry.

MR. BEDDOW—Has it not been the uniform practice of this Convention since the first day to take up reports of committees when handed it, and considered then?

THE PRESIDENT—The uniform rule is that reports of committees lie upon the table and be printed.

MR. BEDDOW—But how about resolutions?

THE PRESIDENT—With reference to the Committee on Rules it has been the uniform practice to take up the report of that committee because it is a privileged committee, and has the right of way under the rules. There is one order of business, No. 7, which is reports of Standing Committees, and Order of Business No. 11 is consideration of ordinances and resolutions, which have been reported from committees. The resolution and report of this committee, therefore, will not be in order until that order of business is reached.

MR. BEDDOW—What order of business is that?

THE PRESIDENT—Order of business No. 11, on page 9 of the rules.

THE PRESIDENT—The next order of business will be the special order, which is the consideration of the report of the Committee on State and County Boundaries. The secretary will read Section 6.

The secretary read the section as follows:

Sec. 6.—No county site shall be removed except by a two-thirds vote of the qualified electors of said county, voting in an election held for said purpose, and when an election has once been held for such purpose no other election can be held for such purpose until the expiration of four years; provided that the county site of Shelby county of this State shall be and remain at Columbiana, unless removed by a vote of the people as provided for in

an act entitled "An act to provide for the permanent location of the county site of Shelby county, Alabama, by a vote of the qualified electors of said county," approved the 9th day of February, 1899, and the act amendatory thereto, approved the 20th day of February, 1899, or by an election held under the provisions of this article.

The Secretary then read the minority report as follows:

#### MINORITY REPORT

The undersigned members of the Committee on State and County Boundaries does not concur in the report of the Committee as to Sections 2, 3 and 4, and he offers as substitute therefor the following:

Sec. 3.—The boundaries of the several counties of this State as heretofore established by law, are hereby ratified and confirmed. The General Assembly may by a vote of two-thirds of both houses thereof arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new counties shall be hereafter formed of less extent than 600 square miles and no existing county shall be reduced to less than 600 square miles; and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation.

Respectfully submitted,

Milo Moody,

C. H. Miller.

MR. SANFORD (Montgomery)—I rise to a point of information.

THE PRESIDENT—The gentleman will state his point of information.

MR. SANFORD—If that is adopted, does that become a part of the Constitution of Alabama, or is it only an ordinance setting aside the acts of the Legislature?

THE PRESIDENT—It becomes a part of the Constitution it seems.

MR. HEFLIN (Chambers)—A parliamentary inquiry: I understand the substitute will be the first thing considered.

THE PRESIDENT—The question will be upon the amendment, the substitute offered by the minority of the Committee for the majority report, the gentleman from Cullman is recognized.



MR. PARKER (Cullman)—Mr. President, and gentlemen of the Convention: Your Committee on this Section has sought to throw an additional safeguard around the old county seats of the counties of Alabama. We say here it will take an election and two-thirds vote of the qualified voters of the county to remove the county seat. It was a unanimous report as to the main part of this Section. The Committee believe that the old county seats are, so to speak, vested rights of property, and we did not think the floating vote of a county should be able to move the county seat, and thus impose the burden of taxation upon the tax payers of the county. As to the proviso in this Section to which there is a minority report, when this question of the removal of the county seat of Shelby County was first brought before the Committee, personally I was opposed for the Committee, or this Convention, to have anything to do with it, but after very careful investigation of this question, during some ten days and with testimony taken before the Committee, which occupies about 135 pages of close typewritten matter, it was so forced upon the majority of the Committee that there were wrong methods used to change the county seat of Shelby County, that we thought it was our duty to see that the county seat of Shelby County should remain at Columbiana until changed by a vote of the people. We considered first whether this Convention had the right to go into local legislation. The distinguished attorney representing the Calera side admitted before our Committee that he thought if it was placed in the Constitution we had that right. But it is not a question before this Convention now because by the action of this Convention ten days ago excepting certain places from the Article on Taxation and by the action on last Saturday in allowing my good friend from Henry to have a new county composed of parts of Henry, Dale and Geneva, this Convention has settled that it would go into matters of local legislation, and so far as that is concerned, this is a matter *res adjudicata* so far as this Convention is concerned. This committee found on that investigation that there was but one member of the House who knew of the existence of this bill, as I say that was the only testimony before the Committee by any witness. It is true that there were filed with the Committee some letters from members of the House, but in making this report we did not consider those *ex parte* matters as evidence. There was no officer of the House who had any independent recollection of the passage of this bill. One witness said on direct testimony that he recollected something about it, but upon cross examination he admitted that he had no independent recollection whatever, and that all he knew was by virtue of his handwriting on the back of the bill. There is no question but what that bill was kept off the Calendar of the House. Both sides admit that. There was no question that it was kept out of all the newspapers. Both sides admit that. There is no question but that the people of Shelby County were in total

ignorance of that bill. Under those circumstances, as a question of expediency, we thought then, and we think now that it is always expedient both in the private walks of life and in a Constitutional Convention, to do away with a wrong and to do that which is right. The people of Shelby County by the election of the present delegates to this Convention upon that issue have repudiated the act, or the attempted act, of the last Legislature, and I think as a matter of right to the people of Shelby county that not only the original part of this section but the proviso should be adopted by this Convention.

MR. SENTELL—As a member of the Committee on State and County Boundaries, and as one of the two members who saw fit to sign a minority report in this case, or this section, I feel it my duty to make some remarks upon this subject, and to explain to this Convention some of the reasons and motives which prompted the minority in making this report. Mr. President, we concede to the majority the highest and purest motives in undertaking to put this section into the Constitution, and we are satisfied that they are doing what they believe is the proper thing to do under the circumstances, and we trust that no less will be accredited to the minority. Mr. President, we concede that this Convention has the power to put this in the Constitution. For the present this Convention has all power so far as law is concerned, we have the power to create and annihilate the laws of this State as suit our will. We have the power if we so desire to wipe out of existence many counties of this State and create new ones in their stead, we have the power to impose great burdens upon the people of this State, and we have the power to relieve these burdens as we see proper. Yes, there is no doubt but what we have the power, but, Mr. President and gentlemen of the Convention, there is a power that is greater than this Convention, that power which brought this Convention into existence and the power which can in one day wipe out all that this Convention can do in months. That power is the people, and I say the people of this State did not send the members of this Convention here to do just such as we will do when we put this article into the Constitution. Mr. President and gentlemen, this is a local matter. There is no question but what it is a local controversy in Shelby county. That fact is proven by the many men who are here from Shelby county advocating both sides of this cause. I doubt not but what every member upon this floor has been approached by one or more citizens of Shelby county advocating one or the other side of this controversy. Each side has charges to make against the other, crimination and recrimination against the other side in this thing. Now, Mr. President, we say that this is not a proper matter to go into the Constitution. It is no part of the business of this Constitution to settle local controversies, and whenever we

undertake to do it, we detract that much from the force, the duty and completion of the Constitution. Now we were sent here to make a Constitution, and, as I said, not to settle local controversies, but the opposite side claim that because as they say fraud was practiced in passing this bill through the house, why then we are justified in taking up this matter and settling it in the Constitution. Mr. President, I hold that the question of fraud does not give us the authority and the right. If fraud was practiced in the passage of that bill the courts of this country are the proper forum before which to make the fight, and the courts of this country are the proper authorities to set aside and declare invalid the act, and they also have the right to go before the future Legislatures of this State, and if the Legislature desires it can at any time repeal that act. But, Mr. President, was there fraud committed? The minority of this committee are compelled to say that in their judgment fraud has not been proven. It is a fact that the proof of fraud consists mainly in negative testimony. They infer fraud because nobody could be found who had any distinct and independent recollection of proof of fraud, because as one of the members of the Legislature and as having been an eye witness, and a partaker in the last work of this past Legislature I wish to say and those who are present will bear me out in that, that I have often seen not more than two dozen members upon this floor at night sessions, and they were passing local bills at the rate of one every two or three minutes and nobody giving any attention except the man who happened to call up the bill and the man who was doing the reading.

MR. THOMPSON (Bibb)—May I ask a question?

THE PRESIDENT—Will the gentleman consent to be interrupted for the purpose of being interrogated?

MR. SENTELL—Yes, sir.

MR. THOMPSON—I desire to ask if you did not vote in the committee room for the resolution adopted by the committee reciting that it was the sense of that committee that the people of Shelby county should have relief. Did you not vote for that resolution upon its passage?

MR. SENTELL—I wish to state that what took place in the committee room is not a proper matter to be discussed on this floor, but in answer to the gentleman I will say that he did not state properly the resolution that was before the committee. Mr. President, as I said before, I have seen not more than two dozen members upon this floor taking part in the passage of local bills, when they were going through at the rate of one bill every two or three minutes, and even those members who were present reading newspapers, discussing other matters and giving no attention to the voting. The clerk would call the roll with one swift long

call, and you could not distinguish one name from another, and nobody answered aye, yea, yes or no, not a man voted, and yet the journal shows a quorum voted in favor or against these bills. Ah, Mr. President, tell me that a man could remember that a bill passed under those circumstances would be proof that it was fraudulently gotten through? I heard a member on this floor say during one of the last days of the Legislature that he could pass a bill through the House putting the Probate Judge of his county in the penitentiary and nobody would know it until it went to the Governor's office for his signature. That was a deplorable state of affairs, I will concede, but it is a fact, nevertheless. Now, Mr. President, as I said before, fraud is not proven, in my judgment, in this case. Now I have no interest in this affair; I know but few people in Shelby County, and those that I do know are my friends. I have no reason for retaining the court house at Columbiana, or having it removed to Calera. I am opposed to this Convention taking up this local matter and consuming \$1,000 a day of the people's money in trying to settle this question, when it ought never to have come into this Convention. There is another fact, or reason, why the minority saw fit to sign their report. The majority of this committee based their reason for putting it into the Constitution, it will be taken as positive proof that the Convention placed that fraud upon those individuals who took part in the passage of that bill.

THE PRESIDENT—The time of the gentleman has expired.

MR. KNIGHT—As a member of the late much abused Legislature, I desire to make a statement in this case. I think the journal, sir, will bear me out in saying that I answered nearly every roll call in that Legislature. I was watchful, and I will state here in my place, sir, that I never heard mention of the removal of the county seat of Shelby County in that Legislature; never heard of such a thing. There were two bills for removal of county seats introduced into that Legislature, and such bills are always attractive; there are always two sides to them, and I never heard this Shelby County removal before. I did hear of the removal of the county seat of Russell from Seale to Girard, and of the removal of the county seat of Baldwin County attracted a great deal of attention, but I never heard of such a thing as the removal of the court house from Columbiana to Calera. There never was such a bill offered in that Legislature that I ever heard of. I am here to state in my place that I do not believe that such a bill ever passed.

MR. THOMPSON (Bibb)—In the first place I shall ask the Convention to pardon me for again appearing before you; and were it not for the fact that I was a member of this Committee that spent from ten days to two weeks in considering this question, I would not now be before you. But by some means my

mind has run through a different channel and by a different course than that of the distinguished gentleman from Crenshaw. The conversion of the distinguished gentleman to the opinion he now defends, has been as sudden as that of Saul of Tarsus. It came about in a night. After hearing the evidence in this case, gentlemen, it was my thought and it was so expressed, that my wish was that every one of the 155 members of this Convention could hear that evidence as we heard it. I submit, gentlemen, had you heard it, that you would not have hesitated one moment, any man who was unprejudiced and unbiased in this matter, could not keep from being forced to the conclusion that wrong was done the people of Shelby County. And, gentlemen of the Convention, in the first place as to the evidence adduced before us, it was not dependent upon the statement of any witness upon the stand, the physical evidence was before us. The actual bill itself, as it purported to have been passed through the General Assembly, was presented and parts of another bill—the back of another bill and the body of another bill were presented; and it showed conclusively to our minds, gentlemen, that when that bill was introduced, it was one measure. When it got to the Journal Clerk's office it was another measure. When it was being read from the Clerk's desk, it was a bill to reduce the corporate area of the town of Calera. When it got to the Journal Clerk's office it was a bill to remove the county site of Shelby County. When it went to the Committee on County and County Boundaries, it was a bill to reduce the corporate area of the town of Calera. That evidence was brought before us in the shape of the Acting Chairman of that Committee, who swore to us positively, as a disinterested man, so far as we knew, that he examined the bill, that he read the first page of it, practically the body of the first page, and was positive that it was a bill to reduce the corporate area of the town of Calera. That Chairman was Mr. W. E. Stripling of Elmore County. When this bill was introduced, if ever it was, the author failed to comply with the rule of the General Assembly, which required that the title of all bills be endorsed on the back. That was not done in this case. Your Committee failed to find where that rule was disregarded in any other instance, and it was conclusively proven that it was a physical impossibility for that cover to have been on the court house bill when it was in the hands of that Committee, for in making the holes through the body of the bill in attaching the cover to it when attached to the court house bill, several letters in the names of the members of the Committee were entirely punched out. Gentlemen, that was a badge of fraud that had to be explained. I submit to you that it was never explained. There was a statement made that the cover was once on the Calera Incorporation bill, but that was before it was ever introduced in the House. If that was a fact, how came those names punched out? How was it possible for that change to have been?

Then again, the Calera Incorporation bill, the body of it I mean, and the back of the court house bill fit in every particular. And then the holes where they were pinned together fit precisely the crease in the paper—fit exactly, and didn't fit anything of the kind in the court house bill. Now, as to the question of fraud. I don't believe any fairminded man can doubt it. Now the only question, it seems to me, here that has moved the minds of the members or delegates, is the question of expediency. As to that, my only reply would be to quote the words of a distinguished member of our Supreme Court in the case of *Morris vs. The Elyton Land Company*, where they say that principle should never be sacrificed at the altar of expediency. As to the form we offer this relief as a part of the Constitution, I would say that we have followed precedents as adopted in all other Constitutions as to that; and I shall refer the Convention to the Constitution of the State of Arkansas as found in Vol. 1 of *American Constitutions*, page 136, not in the schedule of separate ordinances, but in Section 4 in the body of the Constitution, as follows: "In the formation of new counties no line thereof shall run within ten miles of the county seat of the county proposed to be divided, except the county seat of Lafayette County."

"Sec. 5. Sebastian County may have two districts and two county seats, at which County, Probate and Circuit Courts shall be held as may be provided by law, each district paying its own expenses."

In the Constitution of the State of Illinois, found in the same work, page 542, and in the 2d Volume, same work, pages 448, 449 and 450, in the Constitution of the State of Tennessee are numerous exceptions of this kind. In every instance a local measure like this, it was always embraced in a Section of the Constitution. Now then I wish the members of this Convention could see that Shelby County Court House Bill. To use a slang phrase, gentlemen, it was a "dandy." It places a fine of \$1,000 upon each member of the Commissioners' Court, or Judge of Probate, if they failed to comply with the terms of it, or if they failed to levy a tax to pay the bonds issued. It saddled absolutely a debt of \$30,000 upon the people of Shelby County, placed there by a board not selected by the people of Shelby County, but absolutely named in this measure, who could spend this money without accounting to any person on earth, and didn't have to render an account to anybody. They could absolutely spend every cent of it for attorney's fees, and never be held accountable anywhere on earth. Besides the \$30,000, they were authorized to draw warrants upon the County Treasurer for such additional sum that they might see fit, and I submit that it was shown that that matter was secretly done and that the people of that county would never have consented to any such measure; and I ask, gentlemen of the Con-

vention, are you willing to place the stamp of your approval upon such a measure as this? After it is placed upon us it is not a question of expediency. It is not a question as to what the effect may be in Shelby County or elsewhere. The question is what is the right in that matter, and having found the right then will we, by refusal to act, stamp approval by the members of this Convention of such a fraud as that has been shown to be, thus enabling those Commissioners, as named in that bill, to settle a debt and tax upon the people of Shelby County, without their consent? They are left without a remedy. While I do not claim to know all the law, nor any very considerable part of it, but I think I know that with the records of the House in the shape they are in, showing everything regular on its face, the people are left without a remedy anywhere on earth, unless given by this Convention.

MR. FITTS—Mr. President, if I am correctly informed, this is the forty-fifth working day of this Convention. In five days all of the time that was in contemplation when this body was called, when the people delegated it to come here will have been consumed. I think it may be fairly said that the work of this Convention is not half done and the time is nearly gone. What a disproportion that brings up to the minds of the delegates: Out of fifteen Articles this Convention has to write, only four have been written. The paramount issue, the one this Convention was called to pass upon, the one the people had most in mind when we were sent here, will not have been touched at the hands of this Convention when the entire fifty days shall have elapsed. Here today on the 45th day of this Convention after regulating local legislation, after an attempt to build a Chinese wall against local legislation, here we are engaged in the plainest project of local legislation that could be conceived by the mind of man. Why this Constitutional Convention is asked to stop and write down and make a part of this Constitution for our children and our children's children a proposition as to where the Court House shall be in Shelby County. Now do you think that people of Alabama at large are lying awake at night thinking of where the Court House of Shelby County is or ought to be? Do they care anything about it? Do you think they are caring anything about what Mr. So-and-so did in the Legislature? They are not giving a rap about that. The people of this State want us, I believe, to stay here as long as it is necessary to write a fundamental Constitution, and to prepare things that are necessary to go into the Constitution. Now as long as we are here engaged in that task, I don't believe they want us to turn aside—

MR. ROGERS (Sumter)—I would like to ask the gentleman a question. You state that the people of Alabama are not lying awake at night—troubling about—

MR. FITTS—Unless the hot weather keeps them awake.

MR. ROGERS (Sumter)—Troubling about the affairs in Shelby County. Don't you think if the people in Alabama were shown that such a proceeding as this went on in the Legislature that they would lie awake at night?

MR. FITTS—I was just coming to that. I heard the expression fraud used and the expression that the people were overreached. It seems to me that these are fitter terms for courts of justice and that the Constitutional Convention has nothing to do with fraud. That is what the courts were inaugurated and brought about for to determine whether frauds were committed. Will the Constitutional Convention adjourn itself into a court, if so what sort of a court will it be? A Justice Court, or what other sort of a court? What has this Convention to do with fraud? Gentlemen, how is this Convention to determine this question? By a committee? If we are to brand sixty-nine men who voted for this bill as fraud or fraudulent, then I say the Convention as a whole (if we are going into this matter), that this Convention ought to stop and hear the evidence and see whether we individually believe those gentlemen to have been guilty of fraud.

MR. REESE—The gentleman says that 69 men voted for that bill. Is he able to say that he knows that anybody voted for it except the representative from Shelby county?

MR. FITTS—I don't know whether anybody voted for it or not. Don't the Journal show that 69 voted for it?

MR. REESE—Yes, sir.

MR. FITTS—Then the Journal shows the record and is controlling. I was not there and if the Journal shows that 69 voted for it, it looks like they voted for it. I don't know anything about these charges of fraud or improper conduct. I don't think this is the tribunal to determine that. These good people of Shelby county are divided on this matter. The proposition that is made is the same as suggested in the inquiry from the distinguished gentleman from Montgomery when he arose at the beginning of this matter a few minutes ago and said: "Can it be true that this thing is to be written down into the Constitution of this State or is it to be considered a part of the schedule to it?" I don't think that this matter has any place in the Constitution of the State, nor acted upon by the people of the whole State—

MR. O'NEAL—Will the gentleman permit a question?

MR. FITTS—Yes, sir.

MR. O'NEAL—If the Convention see fit to concur in the report of the majority, in your judgment could that act be a separate ordinance?



MR. FITTS—I think it ought to be a separate ordinance and only to be voted for in Shelby county and there ratified or not. Why ask the people of this entire State to pass upon this section in the Constitution in the fundamental law of their liberties of the whole State? It will be patch work that wilt bring derision upon the instrument itself.

MR. BROWNE—Would you say the Henry county matter would bring derision upon the Convention to let the whole State vote upon that?

MR. FITTS—I was not here on Saturday and am not responsible for what they did on Saturday. If I had been here I would have risen in my seat and protested against local legislation in this Constitution. We ought to stay here and make a Constitution and take as much time for deliberation upon it as is necessary; but we ought not to make local laws for Henry county, Shelby county or any other county, no matter how good the people are; and there are no better people than there are in Shelby county, those that live at Calera and Columbiana both, but this is an old sore and an old controversy. There have been charges and counter charges between them for years. They have held elections and had the same old controversy for years. You can't make people think alike by writing it in the Constitution when that county has its natural division of sentiment. People will divide upon it. The question whether the beautiful city of Calera or the more beautiful city of Columbiana should have the court house will be a sore question when you are dead and when I am dead, if the county stays geographically like it is. The frogs at Calera are hollering for the court house and the whip 'o wills at Columbiana are hollering to keep it there, the people are divided upon the proposition and you can't bring them together. What does Calera need to complete its beauty but a court house? If you had a court house standing out there at that railroad crossing, beautifying that lovely landscape standing among the lime kilns, wouldn't it be a joy to every man who has to ride by there on the cars throughout the whole State? Columbiana also needs the court house and the people there look upon its location there with the same devotion and the same love and some desire to keep it. You can't settle this controversy for these good people in this way. You can't make peace where peace will not abide. They are divided upon this subject and they are going to stay divided and it will not help the Constitution by attempting to put this piece of local legislation in the Constitution of the State. Whenever you bring new provisions into the Constitution of the State, whenever you put new language into the Constitution of the State, you incur the weight of criticism and the weight of such objections that the new provisions bring. Whenever you leave the language of the Constitution as it was you have only to incur the fact that the people were not expecting a change upon a point where no change had

been agitated and you have no additional weight to carry, but if you put this local legislation in this Constitution to be voted upon all over this State, it will be a matter that those parties who advocate the ratification of this Constitution must be constantly explaining to the people of Alabama and constantly explaining themselves for having put it in there.

MR. OATES—I have never made any investigation of this controversy one way or the other, but since examining the report and the legal questions involved, I have an opinion about it which I will briefly express. Now I am unalterably opposed to this matter being brought in as a rider upon the Constitution, and I gather from what I have heard said, what seems to me an erroneous opinion by some in regard to the power of this Convention and work to be done. As this is now presented, if passed it certainly does go before the whole people of the State to ratify our action in abrogating an act of the Legislature, changing the location of the Court house at Shelby County. The people of other counties have got nothing to do with it, no interest in it, and they don't want to vote on the one side or the other. That of itself shows the impropriety of placing it here. Then awhile ago when my friend, the delegate from Tuscaloosa, was on the floor, some gentleman suggested an inquiry that if we pass a separate ordinance repealing or abrogating that law, would it have to be ratified by any people except those of Shelby County? That is a very erroneous impression. Why, sir, this Convention is the legislative, judicial and executive department. It is the whole thing of the government of the State of Alabama. It is the entire people here through their delegates. When I address the gentlemen on this floor as delegates, I address them by what they are called in the enabling act, and I think higher than what is generally used in legislative bodies. They are delegates and are elected by the whole people of the State to make a Constitution—not only to make a Constitution, but they have the power to pass ordinances, laws or anything else which they see proper. If they want to reach this matter by way of a repeal of a law which has been passed, a separate ordinance is the thing, and if this Convention passes it, then they meet the question as to whether it goes to the Governor. It has been done in some cases, but I don't know that that is usual. It is a law and will have to stand and the people of the State have nothing to do with it. In considering the testimony, I admit that the testimony shows the clearest kind of a case, all the way through, in favor of that law.

It is very doubtful, to say the least of it, from the hasty examination I have made, but a court has great difficulty, in fact a court according to adjudications, has no power to set aside a solemn enactment of the Legislature upon evidence. It requires something more. They examine the records to see if the records sustain it as a legal enactment, but even if such were the case

that this act could not be annulled by litigation they have pending because of the presumption in favor of the records, if any difficulty of that kind that is presented, there is no trouble in that event, in my opinion, for the friends of the Columbiana controversy here to get a separate ordinance which would repeal that enactment of the General Assembly, or the Legislature, which, it seems to me, will be the proper way to go at it. Now, sir, such an idea seems to be that anything done by this Convention has got to be ratified by a vote of the people. Not so. This Convention has passed a resolution very properly and unanimously to submit the Constitution which it frames, back to the people of the voters of the State of Alabama for ratification. That is entirely proper, and that is correct. Why, sir, let me say this Convention is not going to adjourn in the time which appropriations were limited by the General Assembly. You will have to go beyond that. What are you going to do about your compensation and expenses for it? You have got to resort to the powers of legislation which is vested in this Convention.

MR. JONES (Montgomery) — Is my friend of the opinion that this Convention has any power to appropriate money beyond the time that the Legislature has fixed that these delegates shall receive pay?

MR. OATES—Yes, sir; if I have an opinion about any legal question, I know it has that power—an entire power in that regard. (Applause). It has power to do what is proper to do. I am not afraid myself that it is going to exercise anything improper in this matter, and I don't care about consuming the time, sir—I don't know the controversy between these parties. I know one thing that the controversy about the location of a court house in a county is always one of bitterness between counties. I don't know who is at fault or who is right about it. I don't undertake to settle that; but, sir, this proviso hitched on here to the Constitution of the State is entirely improper and should be stricken therefrom. If the gentlemen were to try it in a different shape by bringing up an ordinance to repeal the act, then it presents a very different question. But in its present shape, I cannot, for one, conscientiously vote for it. I don't care to say anything more.

MR. O'NEAL—I asked the question of the gentleman—I propounded a question to the gentleman from Tuscaloosa which seems to have been misunderstood. I agree with you as to the impropriety of incorporating this as a rider on the Constitution. I asked this question: Could we pass a separate ordinance for the ratification of the people of Shelby County, or any other county? Wouldn't it be a law if we adopted it?

MR. OATES—You can make it a law, or you can submit it to a vote of the people.

MR. O'NEAL—Wouldn't it be simply a matter of grace upon our part as to whether we submitted it?

MR. OATES—I have said the Convention had the power to make it an absolute law if they wanted to.

MR. BROWNE — I desire to say in the opening of my remarks that the gentleman from Shelby (Mr. Beavers) introduced an ordinance similar to the one recommended by the gentleman from Montgomery and that the attorney for Calera, Mr. Martin, appeared before the Committee and spoke against the ordinance and took the position that this Constitutional Convention had no right to pass a separate ordinance upon this question. I differed with the gentleman, but, as there seemed to be some doubt in the minds of some upon that subject, the Committee took the Calera view of the question and put it in the Constitution.

Now, Mr. President, every lawyer upon this floor who has ever studied constitutional law knows full well that an ordinance is as much a part of the Constitution as any other part of it. It makes no difference whether you call it a resolution or an ordinance, or a section or an article. If it is enacted by this Convention it is a part of the Constitution. The Calera people put the friends of Columbiana in this attitude: They appeared before the Committee and with a Pennsylvania case undertook to show that this Convention had no right to pass the ordinance. Mr. Martin was asked if he denied the right to give relief to Columbiana from that fraudulent measure, if the relief was incorporated in the body of the Constitution. He admitted that we had the right to do that. But it makes no difference whether this relief is given by an ordinance or in the body of the Constitution. Members well know if it is passed in its present shape the Committee on Harmony can take this and all other matters out of the body of the Constitution and incorporate it in the schedule as separate ordinances, and that is the way it is done in the constitutions of most of the States.

Now, in answer to the gentleman from Tuscaloosa (Mr. Fitts) as to whether this is an innovation in a Constitutional Convention, I have yet to find a Constitutional Convention that has not enacted some local measure. Even the Constitutional Convention of 1875, although called by an act of the legislature expressly saying it should not pass separate ordinances, did not pass separate ordinances, and, to get around that provision, they incorporated them in the Constitution.

Mr. President, here is the celebrated Shelby Court House bill, and I say, with all due respect that no man who differs with the majority, no intelligent man, can look at the bill with the earmarks of fraud on it and read the testimony of Mr. Dean himself and not come to the conclusion that this thing was passed in a most damnably fraudulent manner. He came out in the news-

papers and said in answer to a suggestion from Mr. Striplin, that the cover must have been changed, that this cover was on it when the members of the Committee signed it. His attention was then called to the fact that the tape and the brads were cut through the names of the Committee signing it and he got sick and it took a week for him to get well enough to come back and explain it, and the way he explained it was that this cover was once the cover to the Calera Land bill, and he took it off and pasted it on this before it was introduced. Talk about testimony, Mr. Striplin came here and without having seen the Land Limit bill of Calera, when he took that bill up he said this was not the bill that was in that blank cover when I reported it. I am not certain but my recollection is it was a little bill about Calera land limits.

I asked the Secretary of State to go down to his office and get me the land limit bill and when he brought that Calera land limit bill, there were the tell-tale evidences of fraud. The pin holes in that Calera Land Limit Bill are identical with the pin holes in the cover that is on this bill removing the county seat. The seven members whose names are signed on the book say they never signed such a bill. One of them says "I recollect, the bill I signed was a land limit bill." Mr. Dean admits that he and Albert Wilson went and got Mr. Martin to draw this bill and he says he immediately got the bill back to go and show it to Mr. Oliver and he kept it until he himself handed it to the Committee and got a favorable report. Then he says he went and got it again. "What for?" "To show it to Mr. Oliver." He says as a reason why it never got in print that he went and got the bill as soon as it was introduced and kept it until it was passed. Mr. Brown of the Brown Printing Company, swore that Albert Wilson came with Mr. Dean down to his establishment at the last of the session and Mr. Dean put this bill on the Calendar and came afterwards and took it off the Calendar, so that it never appeared on the Calendar.

MR. LONG (Walker)—May I interrupt the gentleman with a question?

MR. BROWNE—Yes.

MR. LONG (Walker)—Is it not a fact that this same man Brown afterwards took that back and said it was Senator Oliver, instead of Mr. Dean?

MR. BROWNE—Yes, Mr. Brown said he was not certain it was Mr. Dean but that it was a stout man. But he did know Albert Wilson the man who owns the Calera Land Improvement Company, and Albert Wilson was sitting right there, and never took the stand to deny what was said. They did afterwards go to Mr. Brown and Mr. Brown wrote this letter:

"Montgomery, Ala., June 14, 1901.

"Mr. Dean — Having seen Mr. Oliver and after talking with him in regard to Shelby Court House bill, think it must have been himself (Mr. Oliver) instead of you coming to the office in regard to Calendar."

That makes no difference. He doesn't take a word back of what he says which shows the fraud. I don't care where you saddle that damnable fraud. Mr. Dean admitted in his testimony that he had told Mr. Oliver to pass this bill and that he did not propose to let the people of Shelby County know anything about it.

MR. LONG (Walker)—May I ask the gentleman a question?

MR. BROWNE—I beg pardon, but I only have two or three minutes and I decline to be interrupted.

Mr. Dean undertook to explain as to the cover. Here is a very carefully drawn cover and he said he did not want the bill to go without a good cover. But how is this cover on another bill which was offered by Mr. Dean? Why it is so thin you can read it from one side as well as from the other. It is drawn up by Mr. Dean in his own handwriting and the title is on the back. It is all right to introduce this bill without any cover, but this county seat bill he had to put another cover on. Here is the absolute badge of fraud. There is the land limit bill and the pin holes and the folds of the paper of that bill are identical with this cover now on the county seat bill, and Mr. Dean admits that that bill was once in this cover. When this bill was brought from the Secretary of State's office, no one thought it was more than one bill, but seeing some writing through it I pulled this part down and there is the land bill underneath. Two of these bills, identically the same, were introduced and Mr. Dean admitted when this Court House bill was introduced he went and got it. All that the Clerk has in the way of a memorandum is the number, they call it a jimmy, 1587. Then Mr. Dean kept it until he says he got a favorable report on it. All he had to do was to say I want to keep this bill 1587, you keep the title of it, and the Clerk would do it, and then he had the wrapper taken off of this bill and put the Court House bill in it so as to make the Journal show that the bill had passed.

Mr. Martin has filed a brief in which he states that the two clerks said that they had a distinct recollection of it. I have just exactly what they did say. When the bill was held up before them and when they say the memorandum on the back they said, "I recollect that that bill was passed on that day. But on cross examination Mr. E. F. Jones says: 'Q. When do you remember to have first seen the bill?' 'A. I know only from seeing my journal which I made up on the day it was said to have passed.' 'Q. Have you any independent recollection?' 'A. No, sir; I could not swear positively that I saw it, except that I know from the journal, and I know I compared the second reading from the bill.'

And Mr. Martin in his brief tells you that he swore that he did. Mr. J. C. Adams, the Clerk, on cross examination, said: "Q. I will now ask you if you, as Clerk of the last House, if you have any recollection of having read that Court House bill?" "A. No sir, I do not."

Again on page 75: "Q. You have no independent knowledge of that bill." "A. No sir."

Now I move to lay the minority report upon the table.

MR. HEFLIN (Chambers)—I would like to ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield for a question?

MR. BROWNE—I do not withdraw my motion to table.

MR. GILMORE—I would like to ask a question.

THE PRESIDENT—Will the gentleman allow the gentleman to ask him a question?

MR. BROWNE—I will if the House permits it by unanimous consent, but I will not withdraw the motion to table.

MR. GILMORE—Did not Mr. Jones say that he would swear that that was his signature on the bill and that nothing could be passed fraudulently without the concurrence of a Clerk?

MR. BROWNE—I do not know about that latter part. He said that was his endorsement on the back of the bill but on cross examination he said he had not recollection of it other than having made the entry.

MR. GILMORE—He said it was his signature?

MR. BROWNE—Yes, sir.

MR. GILMORE—And didn't he say that no bill could be passed fraudulently without the concurrence of a Clerk?

MR. BROWNE—I don't think he did.

MR. GILMORE—I heard his testimony.

MR. BROWNE—And we have his testimony, and every member of the Committee knows that Ed Jones stated he only recollected the bill by the signature.

MR. GILMORE—I want to ask the gentleman if he is not the attorney for the Columbiana people?

MR. BROWNE—I am the kind of attorney for the Columbiana people that before God in Heaven I will always be against the perpetration of a damnable fraud of any kind. I am the at-

torney for the Columbiana people, but I am an attorney without a fee.

MR. GILMORE—We have heard that before.

MR. BROWNE—You asked the question and I answered it.

MR. GILMORE—I don't know whether you are an attorney without a fee or not.

MR. HEFLIN (Chambers)—I would like to ask the gentleman if this matter is not now in the Supreme Court for settlement?

MR. BROWNE—I will say that this matter is not in the Supreme Court because I do not know a lawyer in the State of Alabama who is fool enough to get the Supreme Court of Alabama to go behind the Journal of the General Assembly. It is there upon the face of the bill itself, and the Journal imports absolute variety and you cannot go behind it.

MR. WILSON (Washington)—I rise to a question of personal privilege.

MR. HEFLIN (Chambers)—I am informed it is in the courts of Alabama for settlement in three different ways.

MR. deGRAFFENREID—I call for the regular order. There is a motion to lay the minority report upon the table.

MR. WILSON (Washington)—I rise to a question of personal privilege. On account of our relationship with the gentleman so frequently referred to, Mr. Albert Wilson of Montgomery, my brother, Mr. Wilson of Clarke and myself have had nothing to do with this matter. We have discussed it with no one. I do not know how the delegates feel. But the gentleman has seen fit to drag into his discussion my brother, Albert Wilson of Montgomery. And I would like to be accorded the privilege of answering for him the question why he did not go on the stand and refute the charges that he was a party to removing that bill from the calendar.

MR. BROWNE—I make the point of order that the gentleman is not rising to a question of privilege.

MR. WILSON—What reflects on my brother reflects on me. I have tried to demean myself decently in this matter and have kept out of it until I have been dragged into it.

MR. BROWNE—I only state a matter that came before the committee, I have only given the testimony of the Brown Printing Company people.

MR. WILSON (Washington)—I admit that and that is the reason I have had nothing to do with it.



THE PRESIDENT—In the opinion of the Chair the question to which the delegate from Washington is addressing himself is not a question of personal privilege. The question is on the motion to table.

MR. BROWNE—On that I call for the ayes and noes.  
as follows:

The call for the ayes was sustained and the roll call resulted

#### AYES.

Ashcraft,	Howell,	Pettus,
Barefield,	Howze,	Phillips,
Bartlett,	Inge,	Pitts,
Beavers,	Jones, of Bibb,	Porter,
Bethune,	Jones, of Hale,	Reese,
Blackwell,	Jones, of Montgomery,	Reynolds (Chilton),
Boone,	Kirk,	Robinson,
Brooks,	Knight,	Rogers (Sumter),
Browne,	Leigh,	Samford,
Bulger,	McMillan, of Baldwin,	Sanford,
Burns,	Malone,	Smith (Mobile),
Carnathon,	Martin,	Smith, Morgan M.,
Case,	Maxwell,	Spears,
Chapman,	Miller (Marengo),	Spragins,
Davis, of Etowah,	Miller (Wilcox),	Stewart,
Dent,	Murphree,	Stoddard,
deGraffenreid,	Norman,	Tayloe,
Foshee,	Norwood,	Thompson,
Grant,	O'Neal (Lauderdale),	Waddell,
Grayson,	Opp,	Weakley,
Greer, of Calhoun,	O'Rear,	Weatherly,
Handley,	Palmer,	Whiteside,
Heflin, of Randolph,	Parker (Cullman),	Williams (Barbour),
Henderson,	Parker (Elmore),	Winn.
Hodges,	Pearce,	

Ayes—74.

#### NOES.

Banks,	Glover,	Merrill,
Beddow,	Graham, of Montgomery,	Oates,
Byars,	Greer, of Perry,	Proctor,
Cofer,	Harrison,	Smith, Mac. A.,
Coleman, of Greene,	Heflin, of Chambers,	Sollie,
Davis, of DeKalb,	Locklin,	Walker,
Duke,	Lomax,	Watts,
Eley,	Long of Butler,	Williams (Marengo),
Fitts,	Long, of Walker,	Williams (Elmore),
Fletcher,	Lowe, of Jefferson,	Wilson (Wash'gton).

Nays—30.

## ABSENT OR NOT VOTING.

Messrs. President,	Gilmore,	Mulkey,
Almon,	Graham, of Talladega,	NeSmith,
Altman,	Haley,	O'Neill, of Jefferson,
Burnett,	Hinson,	Pillans,
Cardon,	Hood,	Renfro,
Carmichael, of Colbert,	Jackson,	Reynolds, of Henry,
Carmichael, of Coffee,	Jenkins,	Rogers (Lowndes),
Cobb,	Jones, of Wilcox,	Sanders,
Coleman, of Walker,	King,	Searcy,
Cornwall,	Kirkland,	Selheimer,
Craig,	Kyle,	Sentell,
Cunningham,	Ledbetter,	Sloan,
Eyster,	Lowe, of Lawrence,	Sorrell,
Espy,	Macdonald,	Vaughan,
Ferguson,	McMillan (Wilcox),	White,
Foster,	Moody,	Willet,
Freeman,	Morrisette,	Wilson (Clarke).

So the motion to table prevailed.

During the roll call.

THE PRESIDENT—The present occupant of the chair desires to state that he was offered retainers on both sides of this case and he does not feel warranted in voting on the question.

MR. CARDON—I am paired with Mr. Sorrell. He would vote aye and I would vote no.

MR. GILMORE—I am paired with Mr. McMillan of Wilcox, he would vote aye and I would vote no.

MR. MOODY—I am paired with Mr. Almon. He would vote no and I would vote aye.

MR. SENTELL—I am paired with Mr. Graham of Talladega. He would vote aye and I would vote no.

MR. WHITE—Before I was elected a delegate to this Convention I was approached by the friends of one side of this controversy who offered me a fee. I was never employed, but on that account I feel a delicacy in the matter and would like to be excused from voting.

THE PRESIDENT—Unless there is objection the gentleman will be excused.

MR. WHITESIDE—I have an amendment I desire to offer.

The amendment was read as follows: "Amend Section 6, Article II, of the report of the Committee on State and County Boun-

daries by striking out the word 'two-thirds' in the first line of said section."

**THE PRESIDENT**—The question will be upon the amendment of the gentleman from Calhoun and the gentleman from Calhoun is recognized.

**MR. WHITESIDE**—According to my conception this two-thirds rule is in contravention of common right and subversive of Democratic principles. I think it ought to be stricken out and I move the previous question on the amendment and the article—

**MR. HOWELL**—I hope the gentleman will withdraw that motion. Others of us have amendments we would like to submit.

**MR. O'NEAL**—I move to lay the amendment on the table.

**THE PRESIDENT**—The gentleman from Calhoun moves the previous question on the amendment as offered by himself and the sections reported by the committee, and the gentleman from Lauderdale moves to lay the amendment of the gentleman from Calhoun upon the table and the question is on the motion to table.

**MR. GREER (Calhoun)**—I call for the ayes and noes.

The call was not sustained.

**MR. PEARCE**—I would like to hear the reading of the amendment.

**THE PRESIDENT**—The amendment is to strike out the two-thirds vote and leave it to be removed by a vote of the people.

**MR. CHAPMAN**—Has it two-thirds majority?

**THE PRESIDENT**—It has not.

**MR. SANFORD (Montgomery)**—I move to insert the word "majority."

**MR. REESE**—I make the point of order—

**THE PRESIDENT**—The gentleman from Calhoun moved the previous question and the gentleman from Lauderdale moved to table the amendment of the delegate from Calhoun and the question is on the motion to table.

A vote being taken the motion prevailed, the vote on division being 49 ayes and 38 noes.

**MR. PEARCE**—I desire to offer an amendment.

**THE PRESIDENT**—The question now is on the motion of the gentleman from Calhoun for the previous question.

**MR. WHITESIDE**—I ask unanimous consent to withdraw my motion for the previous question.

Objection was made to the gentleman withdrawing his motion, but by a vote of the Convention on division, by 65 ayes and 22 noes the gentleman was allowed to withdraw his motion for the previous question.

The amendment of the delegate from Marion was read as follows: "Amend Section 6 by striking out the word two-thirds in the first line and inserting in lieu thereof the word 'majority.'"

MR. PEARCE—Mr. President and gentlemen of the Convention——

THE PRESIDENT—If the gentleman desires to finish his remarks this morning he must compress them into a small compass. It is only one minute and a half until adjourning time.

MR. PIERCE—I do not offer this amendment to reflect unkindly on the committee in any way as I am very fond of them politically, personally and every other way. As I understood the chairman of the committee the other day he stated that they had fully safeguarded the troubles that have grown out of this court house question. If this kind of an amendment had been properly observed it would have complete safeguarded the troubles that have grown out of this court house question. I offer this amendment because it is in accord with Democratic principles and I hope it will be adopted. I do not want to consume the valuable time of this Convention in discussing a matter that discusses itself.

THE PRESIDENT—The hour for adjournment has arrived and the Convention will stand adjourned until 3:30 and the delegate from Marion (Mr. Pearce) will have the floor.

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#### AFTERNOON SESSION

The Convention met pursuant to adjournment, there being 91 delegates present upon the call of the roll.

Leave of absence was granted to Mr. Searcy of Tuscaloosa for today.

THE PRESIDENT—When the Convention adjourned, it had under consideration Section 6 of the report of the Committee on State and County Boundaries, the gentleman from Marion, Mr. Pierce, had the floor.

MR. PIERCE—Mr. President and gentlemen of the Convention, if there is any principle in the Democratic party that I appreciate more than any other it is the principle of the majority ruling. It safeguards the will of the common people, as I look at it—and I don't use the word "common" as it is used in connection with the word "unclean" in the Bible, I mean the body of our people of

good common sense, and the men who make the money to pay the taxes to build court houses. In my judgment, if you were to adopt this two-thirds rule in reference to moving local court houses, so far as moving court houses is concerned the question would be about at an end.

Now, it was argued here the other day in debating the question as to quorum that one vote could elect a President, or one vote could elect the Electoral College which elected the President. Now, would any gentleman deny the people the right, by a majority vote to locate a court house when it was argued by gentlemen on this floor—

MR. deGRAFFENREID—May I ask the gentleman a question?

THE PRESIDENT—Will the gentleman yield for a question?

MR. PIERCE—Yes, sir.

MR. deGRAFFENREID—Wasn't that argument made when there was an attempt to change the jury law. to say that three-fourths of a jury could bring in a verdict?

MR. PIERCE—Yes, sir.

MR. deGRAFFENREID—Didn't you vote for that?

MR. PIERCE—On Saturday I did, but in a moment I repented of it and I have been repenting of it ever since, and I have asked the good Lord to forgive me for it, but I have doubts of whether he will ever forgive a man of my size and sense for doing such a thing. Now, gentlemen, it is well enough to safeguard these evils. We have had a fair demonstration of that in this Convention, but as I stated in the forenoon, if the principles of the great Democratic party that the majority have had no trouble in Shelby County. It was a want of that principle that caused them that trouble and not by having that principle, and with all due respect to this Committee, a man should never overreach the great principles of the Democratic party to ward off any particular damage or any particular trouble that might come up, as I have no doubt but what those principles properly crystalized into law would safeguard everything through. It is a conceded fact that the great duty of government is to protect the people in their rights, and prevent them from damaging one another. As I before stated, I have no doubt if you were to adopt this two-thirds rule that the people would never be able to move court houses hereafter, and while I don't think that this Committee intentionally over-reached the great principles of the Democratic party, I think it was certainly a little mistake they made, as the principles of the Democratic party, the majority ruling, will certainly meet all the safeguards that anybody would want. Now, gentlemen, I don't want

to consume the time of this Convention. I wish to close and move the previous question with my amendment.

THE PRESIDENT—The gentleman from Marion moves the previous question upon his amendment offered by him this morning. The question is, shall the main question be now put?

MR. WADDELL—I ask the gentleman to withdraw that for a moment. I will renew it.

MR. PIERCE—If you will allow me to reinstate my motion, I will withdraw it.

MR. WADDELL—I will renew the motion when I conclude my remarks.

MR. PIERCE—Very well.

MR. WADDELL—But our governmental system is not founded on majority rule. On the contrary, our whole fabric was woven upon a different theory altogether. Our forefathers saw the evil of this rule and placed a check and true balance wheel upon its operation. The President of the United States is not elected by a majority vote, and the Senate of the United States was created for the sole purpose of putting a check upon the House of Representatives and the veto power was given to the President in order that this check might be enforced both against the Senate and the House. Then why should we attempt to enforce this rule here when the interests of our smaller subdivisions are so vital? Our State Government has recognized the principle, and has given this power to the Governor and to the Senate. Our counties and county seats are vitally affected by this moving. We vote a burden upon the tax payers of the county by a mere majority of one, and the probability is that nine-tenths of all of the tax payers in a county would be opposed to the removal. We create an enormous debt upon them without allowing them a voice in the matter, whereas, if we placed it upon a two-thirds basis they would have a chance to protect themselves. There are vested rights, Mr. President, in a county seat, the old county seats of the State, which should not be ruthlessly violated by a bare majority vote. Is it right that those that have to bear the burden—

MR. HOWELL—Will the gentleman permit me to ask him a question?

THE PRESIDENT—Will the gentleman yield?

MR. WADDELL—No, not at present.

THE PRESIDENT—The gentleman declines to yield.

MR. WADDELL—Is it right that those that have to bear the expense and burden of the removal should have no voice in the matter? It is upon this theory that checks have been placed upon

our National and State governments. It would be oppression if it were otherwise. In fixing a two-thirds rate we give tax payers a chance and a voice in the election. We relieve to a great extent that feeling of anxiety which has been constantly manifesting itself in the Legislature of our State in the shape of local bills to permanently locate county seats, and put the people of the several counties at rest upon the question, without preventing where it is absolutely necessary a removal of the county seat. Wherever it is absolutely necessary to have a removal, there will always be two-thirds of the people in favor of it. This matter of keeping the court houses of our State on wheels, so to speak, is the cause of more local strife than all the other questions with which our people have to deal. These evils were apparent to this committee, and in their wisdom they have solved the question, and in my opinion, Mr. President, they have wrought a great good to the whole people if this report be adopted. Let us rally to their support in their attempt to give to the people a government more in accordance with our institutions. Mr. President, I call for the previous question.

MR. GREER (Calhoun)—I would like to ask the gentleman a question.

THE PRESIDENT—Will the gentleman permit a question?

MR. WADDELL—Yes sir.

MR. GREER—I would like to ask the gentleman if his theory that it should take two-thirds to locate a county seat does not give to the men who live at the county seat just twice as much power as those who are less fortunately situated?

MR. WADDELL—It does not.

MR. PIERCE—May I ask the gentleman a question?

THE PRESIDENT—Does the gentleman yield to the gentleman from Marion?

MR. WADDELL—Yes, sir.

MR. PIERCE—I did not want to interrupt you, but in your speech you said our forefathers advocated the doctrine of a two-thirds vote. I just want to know for information how long has it been since that crowd died.

MR. WADDELL—The National Convention, I think recognized that.

MR. PIERCE—The Government has not done it since I have been living.

MR. O'NEAL (Lauderdale)—Will you withdraw your motion until I can offer an amendment?

MR. WADDELL—I will with the consent of the gentleman from Marion.

MR. O'NEAL—Will the gentleman from Marion consent to withdraw?

MR. PIERCE—No sir, we cannot do that.

MR. WADDELL—I call for the previous question.

MR. PIERCE—Withdraw nothing.

THE PRESIDENT—The previous question is demanded.

MR. HEFLIN (Chambers)—Will the gentleman please withdraw that for the purpose of allowing an amendment?

MR. PIERCE—No sir.

MR. O'NEAL—I raise the point of order that the motion is not seconded.

THE PRESIDENT—The question is, shall the main question be now put?

MR. PIERCE—I call for an aye and nay vote.

THE PRESIDENT—The question is, shall the main question be put?

MR. PIERCE—I withdraw the request for an aye and no vote now, I want an aye and nay vote on the amendment.

MR. O'NEAL—I move to lay on the table.

MR. PIERCE—On that I call for an aye and nay vote.

The call for the ayes and noes were sustained.

MR. HOWELL—Wouldn't it be well to announce that amendment so the House would understand.

THE PRESIDENT—The amendment is to strike out two-thirds vote and inserting a majority vote.

Upon the call of the roll, the vote resulted as follows:

#### AYES.

Ashcraft,	Dent,	Howze,
Banks,	deGraffenreid,	Inge,
Blackwell,	Eley,	Knight,
Brooks,	Fletcher,	Leigh,
Bulger,	Foshee,	Miller (Marengo),
Cardon,	Grayson,	Miller (Wilcox),
Carnathon,	Haley,	Moody,
Davis, of DeKalb,	Harrison,	Murphree,
Davis, of Etowah,	Hinson,	Norman,



Norwood,  
Oates,  
O'Neal (Lauderdale),  
Opp,  
Palmer,  
Parker (Cullman),

Parker (Elmore),  
Phillips,  
Sentell,  
Spragins,  
Stewart,  
Thompson,

Waddell,  
Walker,  
Weakley,  
White,  
Williams (Barbour),  
Williams (Elmore).

Total—45.

# NOES.

Messrs. President,  
Barefield,  
Bartlett,  
Beavers,  
Beddow,  
Bethune.  
Boone,  
Browne,  
Burns,  
Byars,  
Case,  
Chapman,  
Cofer,  
Coleman, of Greene,  
Duke,  
Foster,  
Glover,  
Graham, of Montgomery.  
Grant,  
Greer, of Perry,

Handley,  
Heflin, of Chambers,  
Heflin, of Randolph,  
Henderson,  
Hodges,  
Howell,  
Jones, of Bibb,  
Jones, of Hale,  
Jones, of Montgomery,  
Kirk,  
Ledbetter,  
Locklin,  
Long (Walker),  
Lowe (Jefferson).  
Macdonald,  
Malone,  
Martin,  
Merrill,  
O'Rear,  
Pearce,

Pettus,  
Pitts,  
Porter,  
Proctor.  
Reese,  
Reynolds (Chilton),  
Robinson,  
Rogers (Sumter),  
Samford,  
Sanford,  
Smith (Mobile),  
Smith, Mac. A.,  
Smith, Morgan M.,  
Spears,  
Studdard,  
Tayloe,  
Watts,  
Whiteside,  
Wilson (Wash'gton).

Total—59.

# ABSENT OR NOT VOTING.

Almon,  
Altman,  
Burnett,  
Carmichael, of Colbert,  
Carmichael, of Coffee,  
Cobb,  
Coleman, of Walker,  
Cornwall,  
Craig,  
Cunningham,  
Eyster,  
Espy,  
Ferguson,  
Fitts,  
Freeman,  
Gilmore,  
Graham, of Talladega,

Greer, of Calhoun,  
Hood,  
Jackson,  
Jenkins,  
Jones, of Wilcox,  
King,  
Kirkland,  
Kyle,  
Lomax,  
Long (Butler),  
Lowe (Lawrence),  
McMillan (Baldwin),  
McMillan (Wilcox),  
Maxwell,  
Morrisette,  
Mulkey,  
NeSmith,

O'Neill (Jefferson),  
Pillans,  
Renfro,  
Reynolds (Henry),  
Rogers (Lowndes),  
Sanders,  
Searcy,  
Selheimer,  
Sloan,  
Sollie,  
Sorrell,  
Vaughan,  
Weatherly,  
Willet,  
Williams (Marengo),  
Wilson (Clarke),  
Winn.

**THE PRESIDENT**—It appears upon casting up the vote, there are forty-five ayes and fifty-five noes, and the motion to table is lost. The question recurs upon the motion of the gentleman from Russell, the previous question upon the amendment.

**MR. OATES**—The motion is upon the original section as reported.

**THE PRESIDENT**—On Section 6 and the pending amendment.

**MR. OATES**—Will the gentleman from Russell withdraw the amendment?

**MR. WADDELL**—If the gentleman from Marion withdraws it, I am willing.

By a vote of 52 ayes to 36 noes, the previous question was ordered.

**THE PRESIDENT**—The question will be first upon the amendment offered by the gentleman from Marion, which is to strike out two-thirds for the removal of the court house and insert a majority.

A vote being taken, the amendment was adopted, and on a further vote being taken, the section as amended was adopted.

**MR. PARKER (Cullman)**—I move that the Article as adopted be engrossed and ordered to a third reading.

**THE PRESIDENT**—The next order of business will be the consideration of the report of the Committee on Banks and Banking.

**MR. FLETCHER**—I move that this article be considered section by section.

A vote being taken, the motion was carried.

**THE PRESIDENT**—The Secretary will read the first section.

The section was read as follows:

Section 1. The General Assembly shall not have the power to establish or incorporate any bank or banking company or money institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

On motion of Mr. Fletcher, the section was adopted.

Section 2 was read as follows:

Sec. 2. No bank shall be established otherwise than under a general banking law, nor otherwise than upon a specie basis.

MR. OATES—I have an amendment which I had intended to offer at the conclusion of the report, but it may just as well be offered here.

The amendment was read as follows: Amend Section 2 of Article IV by adding to said section the following: Provided, that any bank may be established with authority to issue bills to circulate as money in equal amount to the face value of bonds of the United States or of this State, county or city, convertible into specie at their face value, which shall before such bank is authorized to issue its bills for circulation be deposited with the State Treasurer or other depository prescribed by law, in an amount equal to the aggregate of such proposed issues, with power in said treasurer or depository to dispose of any or all of such bonds or a sufficient amount of specie to redeem the circulating notes of such bank at any time and without delay, should such bank suspend specie payment or fail to redeem its notes on demand.

MR. OATES—That amendment can do no harm, and, under existing circumstances, would do no good. But we cannot say just what is to come, and I think it is well to have this provision in this Article. You all know that the State of Alabama in two of our State Conventions, declared in platform in favor of the repeal by Congress of the 10 per cent tax imposed upon the issues of State banks. When the last one was enacted, it was followed up by the national platform with a plank declaring in favor of its abolition. The question was up in Congress, elaborately discussed and commented upon and failed by the few votes of accomplishing a repeal.

MR. SAMFORD (Pike)—Just a question for information. If we do not adopt the amendment you suggest, and put it in the Constitution, and the time should ever arise when we might have State banks, would not the Legislature of the State have authority to establish them without any Constitutional provision?

MR. OATES—I don't think it would, because we are now considering a Constitutional restriction of authority upon the establishment of banks, and the Legislature would not have the power to establish banks contrary to its provisions, and, therefore, I offer this as an additional section.

I was proceeding to say that this 10 per cent tax originated in this way. When the unfortunate Civil War came on we had through all the States of the Union a similar system of banking, which was a deposit of one dollar for every three of the bank's circulation, and when specie payments were demanded, the banks were unable to respond and that culminated in loss. After the war, in 1866, the banking system which had been started for the purpose of maintaining the credit of the Federal Government was continued. In the struggle which the Federal Government was undergoing with the Confederacy, its credit had fallen to 50 cents on the

dollar, and Secretary Chase and all others well knew that when the credit of the Government of the United States went down to the low point which it bade fair to, the success of the Confederacy was an assured fact. So, in order to sustain it, Mr. Potter of New York wrote a letter to Secretary Chase, suggesting the national banking system. It was my fortune to see that original letter, which has been preserved. Mr. Chase sent for him and they advised together and framed the first National Bank Act. It was submitted to Congress, and, with a few changes, became a law. The object and purpose of it was to create a market for the bonds of the Government. It did create that market by authorizing the holders of those bonds to use them for banking. And to issue 90 per cent of their face value in circulating notes. They were purchasable then at 50 cents on the dollar, but as soon as this vast market was made for them, they appreciated until they reached par and went above par. That resuscitated and sustained the credit of the Federal Government, and was more potential in giving to it success in putting down the Confederacy than were the Federal guns at Gettysburg. It was the one stroke of all in the war that prostrated the Confederacy.

MR. WALKER—Is it the purpose of your amendment to allow the establishment of State banks not upon specie payments?

MR. OATES—I will explain that. At the close of the war these National Banks had in circulation about \$75,000,000. They expected to get much more. The system was intended for commercial purposes. It never had the necessary elasticity. It was simply intended to create a market for the bonds of the Federal Government, but they conceived the idea that they might extend its circulation to a vast amount, and this purpose was declared at the time the Federal policy was declared with John Sherman as Secretary of the Treasury, to retire nearly all the greenbacks, which was over \$500,000,000. When that policy began, it was understood that there would be a necessity for a greater volume of paper money, and then the National Banks, desiring to supply that demand, brought influence to bear on Congress which imposed on the State Banks a 10 per cent tax, which they knew the State banks could not survive. It was tantamount to saying that no State bank should issue these notes, although it had been decided more than fifty years before in the Kentucky case that the States had a right to have banks of issue and it went on to discuss that at greater length than I have time to refer to. That was the object and purpose of that 10 per cent. tax and it completely squelched the State banks, as much so as if the Congress of the United States had had the power and had passed an act declaring that no State should have any such banks. It taxed the State banks out of existence. Now the question of the repeal or modification of that tax is not settled. It is the only reminder of the acts of the Federal Govern-

ment in robbing the States of the rights they had under the Constitution which still remains in full force and I trust the day is not far distant when men will be in the Congress who will see the injustice of it and repeal or modify that odious tax.

Now should that be done before this Constitution ceases to be the organic law of Alabama, we may want to avail ourselves of it. This amendment is not obligatory but it provides that banks may be created as banks of issue with a deposit of solvent bonds convertible into specie at their face value, whether of the United States, the State of Alabama, or any county or city, an equal amount dollar for dollar with the issue of such bank or banks, with the power in the depository on the failure any time of any bank to redeem its bills in specie to sell and convert those bonds into a sufficient amount to redeem them. Other parts of this ordinance requires that every bank shall redeem its bills in specie on demand. I want that to be in operation, but at the same time it is perfectly practicable to incorporate this and let it remain so as to be of use should the time come, as I hope it may when you can broaden your basis of circulation with perfect security and make bonds which are convertible into specie the source and basis of banking and will add to your circulation on as safe a basis as the national banking system. I think it would be of such elasticity as to furnish the State with what money is needed. It will expand and contract according to the demand and will add to our internal wealth.

MR. ROBINSON—Is there any provision in the Constitution which prevents the Legislature from doing this?

MR. OATES—When you adopt this other provision you can do it?

MR. ROBINSON—What Section do you refer to?

MR. OATES—The Section which declares that no bank shall be established except on a specie basis. I want to make it on a bond basis convertible into specie.

MR. WALKER—Does the gentleman construe the provision as contained in this Section as anything more than a requirement that any bank shall meet its notes on demand in specie.

MR. OATES—No bank can be established except on a specie basis.

MR. WALKER—But is not the extent of that requirement that it shall meet its notes in specie on demand?

MR. OATES—But I am inclined to think you had better have more room for the establishment of such a system if you can get it. It does not do any harm but leaves it to the Legislature to put it in force.

MR. FLETCHER—We had hoped that this would be one Article which would escape the pruning knife that has been so freely used in this Convention. The distinguished gentleman from Montgomery for many years in Congress endeavored to have this tax on State banks repealed, but it was not done. As long as that tax remains we are hampering the Constitution and accomplishing no purpose. We think the Legislature is perfectly competent and if at any time this law imposing the tax is repealed the Legislature can take the necessary action relative to State banks. I can see no purpose or object or anything this amendment accomplishes and I therefore more to lay it on the table.

A vote being taken, by 38 ayes to 50 noes, the House refused to table the amendment.

MR. OATES — I now move the previous question on my amendment to this Section.

A reading of the amendment was called for and it was read as follows:

Amend Section 2 of Article XIV. by adding the following: Provided, that any bank may be established with authority to issue bills to circulate as money in equal amount to the face value of bonds of the United States or of this county or city—

MR. COLEMAN (Greene)—A circulation based on city and county bonds?

The reading was continued as follows:

Convertible into specie at their face value, which shall, before such bank is authorized to issue its bills for circulation, be deposited with the State Treasurer or other depository prescribed by law, in an amount equal to the aggregate of such proposed issues with power in the said treasurer or depository to dispose of any or all of such bonds for a sufficient amount of specie to redeem the circulating notes of such bank at any time and without delay, should such bank suspend or fail to redeem its notes on demand.

MR. O'NEAL—Do you intend that the bonds of a city shall be used regardless of their value?

MR. OATES—No, sir; and that is not the language.

MR. O'NEAL—It says "city bonds." You can get city bonds in this State not worth ten cents.

MR. OATES—There is no such proposition there.

MR. SAMFORD (Pike)—I rise to a point of order.

MR. OATES—If the gentlemen will just let me alone a minute and contain themselves, I will straighten that out, I ask unanimous consent to strike out the words "county and city."

A vote being taken the previous question was ordered.

MR. deGRAFFENREID — I would like to know if that amendment says "United States bonds and bonds of this State or of a State?"

THE CLERK—Of this State.

MR. O'NEAL—At their par value?

THE CLERK—At their face value.

A vote being taken the amendment was adopted and a further vote being taken the section as amended was adopted.

The Clerk then read Section 3 as follows:

Sec. 3. All bills or notes issued as money, shall be at all times redeemable in gold or silver and no law shall be passed sanctioning, directly or indirectly, the suspension of any bank or banking company of specie payment.

A vote being taken the section was adopted.

The Clerk then read Section 4 as follows:

Sec. 4. Holders of bank notes and depositors who have not stipulated for interest, shall for such notes and deposits, be entitled in case of insolvency, to the preference of payment over all other creditors.

MR. WATTS—I have an amendment.

The amendment was read as follows: Amend Section 4 of the report of the Committee on Banks and Banking by adding at the end thereof the following: "Provided, this section applies to incorporated banks only."

MR. WATTS—My reason for offering that is this. This section in the old Constitution has, on several occasions within the last year or two, been the subject of much discussion amongst the lawyers throughout the State as to whether it applied to incorporated banks or all banks. This amendment is simply to remove that question in the future.

MR. HARRISON—I desire to ask the delegate from Montgomery what good reason there is for excluding private banks, not incorporated under the provisions of this Article?

MR. WATTS—Because the whole section applies to incorporated banks and not to private banks.

THE PRESIDENT—The Chairman of the Committee indicates that the Committee is willing to accept the amendment and the question will be on the adoption of the amendment offered by the gentleman from Montgomery.

MR. HARRISON—I trust that amendment will not be adopted. If it needs amendment, according to my views it should be amended so as to include all banks and bankers whether incorporated or not. As stated by the delegate from Montgomery, I am aware that there has been a difference of opinion among lawyers as to the proper construction, and in view of that I would like to offer an amendment saying that all bankers whether incorporated or not are subject to the provisions in this Constitution.

MR. WILLIAMS (Marengo)—I have such an amendment already prepared.

MR. HARRISON—Then I will yield for you to offer it.

The amendment referred to was sent up to the Clerk.

MR. HARRISON—I think this protection should be given to the depositors of all banks, whether incorporated or not. When anybody sets up a bank and receives deposits, why should they be exempt from the law. They go under the name of a bank and many innocent people go there to deposit and the effect of this amendment offered by the gentleman from Montgomery would be to take away any protection from the depositor in one of these private banks, a bank not incorporated. It seems to me of all banks on earth they should be made responsible and made to come under this provision of the law.

MR. WATTS—Don't this whole article apply to incorporated banks. Down in another section here it says the State shall not be a stockholder in any bank. Can any construction be put on that save that it is an incorporated bank?

MR. HARRISON—If it is susceptible of that construction, I want to amend it so as to make it apply to all banks. I can see no reason why incorporated banks should be held up to this accountability and private banks not.

MR. WATTS—But does not the whole article apply to incorporated banks?

MR. HARRISON—Not necessarily.

MR. WATTS—Does not the amendment I offer make clear what the purpose of the article is?

MR. HARRISON—But you do just what I don't want done.



The amendment of the delegate from Marengo (Mr. Williams) was read as follows: Provided this section shall apply to all banks whether incorporated or not.

MR. HARRISON—That is what I want.

A vote being taken the amendment of the delegate from Marengo, which was offered as a substitute for the amendment of the delegate from Montgomery (Mr. Watts) was adopted. A further vote being taken the said amendment was adopted as an amendment to the section, and a still further vote being taken the section was adopted.

Section 5 was then read as follows:

Sec. 5. Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization, (unless the General Assembly shall extend the time), and promptly thereafter close its business; but shall have corporate capacity to sue and shall be liable to suits until its affairs and liabilities are fully closed.

On motion the said section was adopted.

Section 6 was then read as follows:

Sec. 6. No banks shall receive directly or indirectly a greater rate of interest than shall be allowed by law to individuals for lending money.

On motion the section was adopted.

Section 7 was then read as follows:

Sec. 7. The State shall not be a stockholder in any bank, nor the credit of the State ever be given, or loaned, to any banking company, association or corporation.

MR. WATTS—I have an amendment.

The amendment was read as follows: Amend Section 7 of the report of the Committee on Banks and Banking as follows: Strike out the words "the State shall not" and in lieu thereof insert "neither the State nor any political subdivision thereof shall" and insert the word "shall" between the word "nor" and the words "the credit" in line 1.

A vote being taken the amendment was adopted and a further vote being taken the section as amended was adopted.

Section 8 was then read as follows:

Sec. 8. The General Assembly shall by appropriate laws, provide for the examination by some public officer, of all banks and

banking institutions and trust companies engaged in banking business in this State.

MR. DAVIS (Etowah)—I offer an amendment.

The amendment was read as follows: Amend Section 8 of Article XIV by adding at the end of the section the following words: "And each of such banking companies or institutions shall through its president or such other officer as the General Assembly may designate under oath make a report of its resources and liabilities twice a year."

MR. DAVIS (Etowah)—I do not desire to comment at length on that amendment. It seems to me its wisdom is apparent. Where people are depositing their money in a bank they have a right to know the standing of that bank, its resources and liabilities, and I can see no reason why a State bank should not be under the same rule in that respect as a national bank. I feel that the amendment would add strength to the banking institutions of the State.

MR. ASHCRAFT—I desire to offer a substitute for the pending section and amendment.

The substitute was read as follows: Amend Article XIV as reported by the committee by striking out Section 8 thereof.

MR. ASHCRAFT—The Constitution does not prohibit the Legislature from enacting such regulations for State banks and private banks as it may deem proper from time to time. I think it is proper to leave this power in the hands of the Legislature. So far the Legislature has not deemed it wise although the question has been several times agitated in the Legislature, to require State banks to submit to an examination. There is not, relatively speaking a great number of State banks and the expense incident to their examination in any manner that would provide additional security for their depositors and stockholders would be very great. An examination that would not be of that thorough character to give proper information about the bank would be no examination at all, as has been demonstrated several times. During the panic the percentage of failures of national banks was greater than the percentage of failures among the private banks. Now as the legislature is not prohibited at all in this regard, if the public at any time should demand a provision for the examination of State banks, such a provision would be enacted. I don't think we should put it in our organic law because if it should prove unsatisfactory to our people there would be no way to get out of it.

MR. SANFORD (Montgomery) — They could amend the Constitution.

MR. ASHCRAFT — But that is very difficult, as we have learned. I therefore trust the amendment will prevail.

MR. MALONE—I wish to oppose the amendment of the delegate from Lauderdale. If there is anything in this State that we should do it is to open a way for State banking institutions for the people of Alabama. We are getting away from the conditions that prevailed years back and a great many of our people are accumulating money and it will be only a short time before we will have a lot of savings banks. I submit that the average depositor is completely at the mercy of a bank. He cannot go to the bank and say you must show me your books. He doesn't know a thing in the world about them. So far as the legislature is concerned we all know that only a few years ago when a bill similar to this was up and came near passing the private banks of the State headed by a prominent institution in Montgomery, and assisted by myself, for which I got caught afterwards, defeated the measure. There is no use talking about members of the Legislature, for when three or four banks from a representative's district come down on him he can hardly help voting with them.

MR. ROGERS (Sumter) — Is it your opinion that the examination of the National banks we now have are a benefit or injury to the public?

MR. MALONE—It is a decided benefit, and I speak from experience.

MR. ROGERS (Sumter)—Would not an examination of any bank, to be beneficial, have to take up the account of each individual depositor as well as debtor, and is this ever done?

MR. MALONE—Sometimes.

MR. ROGERS—And, therefore, the report of the examiners deceives the public more often than it gives them information in an examination of a bank thoroughly you will have to take up the account of every individual depositor and creditor of the bank to see how he stands, discount his notes and everything.

MR. MALONE—These reports made by the examiners do not go to the public, unless it is shown by the examination that the bank is insolvent. These five annual statements are made up and sworn to by the officers of the bank and printed. The examination that the examiner makes never becomes public and it is one of the best safeguards possible.

MR. HENDERSON—In your opinion does the average man know anything about the solvency or insolvency of a bank or are they looking to its published statement?

MR. MALONE—When made by an officer, yes sir.

MR. HENDERSON—How can an average man tell from a statement whether a bank is solvent?

MR. MALONE—The bank examiner can report that himself.

MR. HENDERSON—That would have to be based upon the idea that the examiner is familiar with the local conditions and with the value of the conditions?

MR. MALONE—I certainly would presume there were competent officers at the head of it. Just the other day there was a bank in the city of Buffalo, the president of which had been president of the Bankers' Association of the United States, who stood high and whose opinion was regarded as authority. Yet the bank examiner examined his bank and closed it up, and, as a matter of fact, by closing that bank saved much money to the creditors.

MR. HENDERSON—Is it not your opinion that the adoption of this section will have a tendency to drive depositors from State and private banks to National banks for the reason that State and private banks would be examined by State officers, and the National banks by National bank examiners?

MR. MALONE—If the gentleman gets too close I will have to call taw on him. I think unquestionably it will be a benefit to have these examinations. I do not believe it will help the men not examined. Unquestionably it will bring more deposits to those that are examined, and I submit that it is worth \$20 for any man to have an expert go through your business.

MR. COLEMAN (Greene)—You stated just now that you and some others at the last term of the Legislature, or the term just before that, succeeded in defeating a law similar to this?

MR. MALONE—In the Legislature.

MR. COLEMAN (Greene)—At that time you were running a private bank? And now you are running a National bank?

MR. MALONE—Yes, sir; and those are my views exactly. One of my stockholders came to me and said: "You are making a mistake, you are putting your competitor across the street where he will get as much business as you will. What do you mean?" It is not necessary for me to call names. He said for that very reason you had better let it alone. My reply was that I came here to give the people of Alabama the benefit of my experience in any line and not to attend to my own business. I can take care of that. I have been in both of these lines. I have only been in the National for a year and a half, and what I am trying is to get the little banks where men who put away their little savings will always be able to get them. You all know that the first little start you get is the hardest.

MR. HARRISON—Does the article reported by your committee contemplate an examination of the National banks by State inspectors?

MR. MALONE—Certainly not.

MR. HARRISON—Would not the words bear that construction?

MR. MALONE — But the United States would not permit that.

MR. HARRISON—Then you had better guard it.

MR. MALONE—The United States law would not permit it.

The delegate from Henry (Mr. Malone) moved the previous question, but withdrew it for Mr. Henderson.

MR. HENDERSON — I desire to say a few words on the pending section. This is a matter, it seems to me, entirely for legislative enactment and has not place in the Constitution.

If I properly understand the purpose of a Constitution, it is for restricting and limiting the bounds within which the legislative machinery may work, or rather to say what the legislature shall not do, than to say what it shall do. All rights which the people do not reserve in their Constitution are delegated to the General Assembly to legislate upon. By the adoption of this Section you say to the legislature, you shall do something which the Constitution does not forbid you from doing. In my opinion the adoption of this Section means the creation of new and additional officers without benefit to the people. People put their money in banks not because the banks are examined, but because either of confidence in the management of those in charge or from personal or political influence. Examinations as we all know, do not prevent bank failures. Possibly most of you know there were more national bank failures in the panic of 1893 than there were failures of State and private banks.

If the purpose of this Section is to protect the people against bank failures and I suppose this to be its purpose then it should be constructed as to provide a board of examiners to issue license only to such persons to engage in the banking business who, in the opinion of the board have all the requisite fitness to successfully conduct such business.

MR. MALONE—Is not that a matter purely one for legislative enactment?

MR. HENDERSON—This section, yes, and that is what I am speaking for. I say the legislature has a right to provide for the examination of State banks without the Constitution saying they shall or may do it.

MR. MALONE—We want to make it mandatory.

MR. HENDERSON — You want to legislate. How many men in this Convention can tell the solvency or insolvency of a bank by looking at a published statement. You can see the amount of cash on hand, amount of deposits and loans but of the character of loans you cannot judge and a State Bank Examiner would know little more. The people do not like to have their private affairs pried into by State officers. The adoption of this section would cause the shifting of deposits from State and private banks to National banks over which State officers would have no control and thereby be the means of discrimination against State and private banks and in favor of National banks. There are a few things which the people want at the hands of this Convention and as I understand them they are these: 1, Limiting the right of suffrage; 2, less frequent elections; 3, limiting the Legislature in the passage of local bills; 4, relief from unjust discrimination in freight rates; 5, a division of the school tax fund in proportion as it is said by the two races. They may have wanted some others but I am sure they wanted no new offices and I do not think they wanted any material changes in the present Constitution aside from those I have mentioned. Aside from the pledge imposed by the party platform I was pledged to my people on two other propositions and they were: first, support no measure in this Convention whereby the salary of State officers would be increased or fixed in the Constitution. The other was to support no measure whereby the number of State officers would be increased. On account of this pledge, Mr. President, I voted against the measure before this Convention in the early session to increase the salary of Governor.

Mr. President, the spirit of governmental paternalism is growing stronger. The tendency is to try to accomplish too much by legislation. Men expect and depend too much on government to aid them in their business. No people ever was nor ever can be legislated into prosperity. These are some of the reasons why I think this section of the report on banking should not be adopted.

MR. COLEMAN—Mr. President and delegates of the Convention: The discussion of this question shows how closely people look after their own interests. Every officer of a national bank in this Convention who has spoken thus far favors the adoption of Section 8. Those who are interested in State banks are opposed to it.

I have persistently voted during the sittings of this Convention against every enactment which properly belongs to the Legislature, and for that reason, continuing to do so, shall vote for the substitute offered by the gentleman from Lauderdale. But while that is so, it is due to the Convention to say that the examination proposed in this Section is really putting a clog or a burden on the State banks and putting them at a disadvantage as compared with

a National bank. Really a bank is judged by its officers and directory more than anything else. The people put their money in these banks according to their confidence in the business capacity, solvency and integrity of those who manage banks.

MR. MALONE—May I ask the gentleman if he is a private banker?

MR. COLEMAN—I am going to tell it all. I do not have to be asked. I am speaking about what I know. The big failure the other day occurred immediately after a report by a National Bank Examiner and not before. It is utterly impossible for any ordinary examiner not acquainted with local conditions and securities to examine a bank and report with any certainty upon its condition.

MR. WALKER—Is it not a fact that the big failure in Buffalo occurred in a few days after a report by a National Examiner certifying the condition of affairs of the bank and that they were all right?

MR. COLEMAN—That is just what I stated a few moments ago, and there are more failures of national banks than of State banks proportionately.

MR. MALONE—Is it not a fact that that very failure was caused by the report of the Examiner?

MR. COLEMAN—On the contrary the Examiner reported it all right. But so far as you are concerned, that has been demonstrated. You opposed this when you were interested in the State bank and as soon as you get in a National bank you advocate it. That is enough on that proposition.

MR. MALONE—Let me ask you—

MR. COLEMAN—I cannot yield any more. I do not want my time consumed.

What we object to is increasing fees and charges on your State institutions. If they voluntarily want it the Legislature can at any time without this provision adopt just such a law as is provided for here. It is purely a legislative matter and ought not to be in the organic law. It is a question of fees and charges.

The gentleman asked me if I was interested in a State bank, and I say yes, but I am telling you what I know and I am speaking to you candidly about it. It is the confidence the people have in the integrity and solvency of your directors that gets the deposits in the bank. There is an opinion in the country that because a National bank has bonds deposited it is more secure than a State bank, but that does not rest upon any solid foundation.

Now I want to say to the delegates here, if you increase the fees and charges against banks by examination, you are bound to have officers to do this examining. You create new offices. If it should become necessary, let it be done, but I contend that now there is no necessity for it and I do think the delegates to this Convention ought to keep in mind the great principle that we are framing an organic law and we are not here legislating purely.

MR. MALONE—I move to lay the substitute on the table.

A vote being taken on a division, by 61 ayes to 23 noes the substitute was laid on the table.

MR. O'NEAL—I now move the previous question on the Section and the amendment.

A vote being taken, the main question was ordered.

MR. HEFLIN (Chambers)—I move to table the amendment and the original Section.

THE PRESIDENT—It is too late after the previous question has been ordered. The question is on the adoption of the amendment of the delegate from Etowah.

MR. HEFLIN (Chambers)—I hope the Convention will indulge us just a moment. A good number of delegates voted a moment ago thinking they were striking out this Section.

THE PRESIDENT—Those same delegates will be able to express their will on the adoption of the amendment.

MR. deGRAFFENREID — On the adoption of the amendment I call for the ayes and noes.

The call was not sustained, and a vote being taken the amendment was adopted.

MR. HARRISON—If this matter is adopted it ought to be correct, and it ought not to be left in language that would apply to national banks. The language is very broad.

MR. O'NEAL—The great argument of the National bank is that they are required to be examined.

MR. HARRISON—By National bank examiners, but they are here required to be inspected by State officers. I favor the report but this matter ought to be corrected.

MR. BOONE—I rise to a point of order. The previous question has been ordered and it is not debatable.

A vote being taken the Section as amended was adopted.

MR. ROGERS—I vote aye for the purpose of moving a reconsideration of this Section tomorrow morning.



MR. SAMFORD (Pike)—I was rising to give notice for that same purpose.

MR. REYNOLDS (Chilton)—I have an additional Section to offer.

The amendment was read as follows:

Amend the report of the Committee on Banks and Banking by additional Section, to be known as Section 9 as follows: Sec. 9. If necessary for the payment of any creditor or depositor of an incorporated bank, each holder of stock therein shall be held liable for double the amount of stock held by such stockholder in said bank.

MR. REYNOLDS (Chilton)—I was a member of the Committee on Banking and I reserved the right when the Committee reported to offer this amendment at the proper time. It was not the views of the entire Committee, but some of the Committee agreed with me on this question.

When men associate themselves together and organize a bank and hold it out to the world as a place to receive deposits and to take care of the people's money, I see no reason why the law should not at least make them partly responsible for failures when the people's money is squandered. A corporation can be organized with \$25,000 of capital and pay the President \$5,000 and the Secretary \$4,000 and in a few years they have nothing left but a tin box. An advertisement of a bank carries with it that it is a place of safety to deposit money, and banks of an insolvent or unsafe character generally get the money of poor people and widows. Nobody who investigates puts their money there.

It is an everyday occurrence that Presidents of banks are skipping out, and when people put themselves up as having a bank, a place of deposit, the law cannot be too strong in taking care of the money that is deposited with them. People put their money in a bank without hope of reward, they draw no interest and they place it there simply for safety, that it may be taken care of, and the money that is generally lost is money belonging to people who can the least afford the loss. Business people for two years before the failure of a bank have been keeping clear of that bank, and it is only the money of poor people and widows that is left there to be lost, and I can see no reason why the law of our State should not at least make stockholders of a bank partly responsible for the money deposited in their bank.

MR. KNIGHT—I move to lay the amendment of the gentleman on the table.

A vote being taken by 49 ayes and 30 noes on a division the amendment was tabled.

MR. WILLIAMS (Marengo)—I have an amendment to the Article.

The amendment was read as follows: "Amend Article on Banks and Banking, by adding Section —. That the provisions of this Article shall apply to all banks, trust companies and individuals doing a banking business, whether incorporated or not.

MR. FLETCHER—I move to lay the amendment upon the table.

Upon a vote being taken, a division was called for, whereupon a reading was demanded.

MR. WILLIAMS (Marengo)—It has been suggested that I insert in there "except National banks." If I can get unanimous leave to insert "except National Banks," I would like to insert it.

MR. PARKER (Cullman)—A point of order. The vote has been put, and a division called for.

Upon a vote being taken, the motion to table was lost.

MR. O'NEAL (Lauderdale)—I desire to offer an additional section.

THE PRESIDENT—The question is now on the section offered by the gentleman from Marengo. The House has declined to table the section.

MR. WILLIAMS (Marengo)—I ask unanimous leave to insert the words "except National Banks."

The leave was given, and the amendment made.

THE PRESIDENT—The question is upon the adoption of the section offered by the gentleman from Marengo.

MR. WINN—It seems to me that the action of the Convention in reference to banking in this State and State banks, is somewhat hasty and inconsiderate. Let's take it practically and see what is the result. You talk of doubling the responsibilities of the stockholders of State banks. Let us see what the operation of such a provision is. Here is a State bank, organized probably a year ago, and the stock was subscribed and issued under the laws of the State, and now you put in the Constitution a provision that the responsibilities of those stockholders shall be double the amount that they have subscribed.—

MR. WILLIAMS (Marengo)—A point of order. The gentleman is not speaking to the amendment at all.

THE PRESIDENT—The point of order is well taken.

MR. deGRAFFENREID—I rise for the purpose of opposing the amendment offered by the gentleman from Marengo. His amendment makes section 8 applicable to all banks doing business under the State law in Alabama, whether such banks are corporations or are conducted by individuals. The result of that amendment, if adopted, will be to drive all individuals out of the banking business. So far as I am concerned, I am entirely disinterested in the matter. I am somewhat interested in a State bank, which is a corporation, but I represent no one who is doing a banking business on his individual account. However, we all know that people do not like to have their private affairs too thoroughly investigated by public officers. We know for instance, that the back tax commission law has not been a popular measure in Alabama, because the people resented the idea that their affairs were to be gone too thoroughly into by the officers of the State. If you pass this law, you drive every individual in Alabama out of the banking business. There are a good many people in this State who own property other than that which they have invested in the banking business. They have other business interests besides the banking business in which they may be engaged. I have in my mind a citizen of well recognized financial ability, who resides in the town in which I live. He has a bank and does a banking business. Part of his assets are invested in that bank, but a large part of his assets are not invested in the bank. He may owe debts other than the debts that are due by him on account of the bank. In order to get an intelligent report as to his condition, you would not only have to ascertain how much he owed as a banker, but how much he owed as an individual to other people, and you would have to find out not only how much money he had invested in the banking business, but what he had invested in other enterprises, in order to make a report upon his financial standing and responsibility.

It does seem to me that whenever you get to that pass in this State, whenever you get to the point that a man, in order to engage in a private enterprise, which is a lawful business, must report his affairs to the State twice each year and get into the public prints, you absolutely drive him out of business, because the banking business is not more lucrative than a great many other characters of business in this State.

MR. O'NEAL—If it is a private business, does he not receive the moneys of the public, just like a National bank, and ought not the public to be entitled to some protection, if he has a private bank, or an incorporated bank, or a National Bank?

MR. deGRAFFENREID—The reasons for the establishment of examiners for national banks is not applicable to an individual who engages in the banking business. In the first place, as we

know the national banking law authorizes the bank which is conducted under that law to issue bills which circulate as money. It goes further and requires that the stockholders in the bank shall be liable in double the amount of their stock, all because the government of the United States itself is more or less involved in the financial integrity and proper conduct of the bank. But when you come to the individual, when you come to the man that lives in a community, the deposit is made with him on account it may be of personal friendship, on account of personal association or on account of the manner in which he is regarded by his neighbors. He is not made a depository as is the national bank for the public funds, because every national bank that exists in the United States is liable to be made a depository of public funds. For that reason its officers are quasi public officers, and as the institution is in fact a public institution, it becomes the government which called it into existence, and gave it authority to act, to see that the bank is properly conducted, as far as it can do so. With an individual engaging in a lawful business, it has never been heard of anywhere I do not believe, that any public officer should pry into his private affairs more than into the private affairs of any other individual in the Commonwealth. I will state that we have in a great many small communities in this State individuals who conduct a small business, that is in reality a banking business, who do good in the community where they live, but if you adopt this law, you will drive them out of that business and for that reason I am opposed to it, and I move to lay the amendment offered by the gentleman from Marengo upon the table.

MR. WILLIAMS (Marengo)—I will ask the gentleman to withdraw that motion.

MR. deGRAFFENREID—I will if the gentleman will let me renew it.

MR. ASHCRAFT—I rise to the point of order that the same motion has been submitted to this house and voted down.

MR. deGRAFFENREID—Then I withdraw it. I did not know that.

THE PRESIDENT—The point of order is well taken.

MR. WILLIAMS (Marengo)—In answer to the position that the gentleman from Hale takes that national banks ought to be examined, and that State banks ought not to be examined, and that this section should not be incorporated into the Constitution, I will say with him that on the proposition before the house I voted to strike this particular Section 8 from the Constitution, but the Convention saw fit to keep it in there. The Convention seeing fit to retain that section, in my opinion a safeguard should be thrown around all of the banks, all of the trust companies and all banking

institutions, whether private, incorporated or individual bankers, and my idea is to make this section apply to all banks and banking institutions. As a matter of fact this is legislative; no one denies that and no one can doubt it, but as it is there let us make it go far enough to cover the whole thing.

Now as to the matter of prying into private affairs, I desire to say that we find these private matters investigated in the national banks. They have large depositors, and if perchance some squeamish fellow has gone over to a private bank, or a State bank, and there deposited his funds because he does not want to have his private affairs looked into, it strikes me that man has builded his house on a sandy foundation. It is just for such fellows as that, along with the balance, that it strikes me this section should be adopted, so as to say to that man whether that bank is safe, or is not safe. Suppose the bank is decided not to be safe by the public examiner, the particular individual who doesn't want his affairs inquired into is told of it, and don't you believe he will take his money out? It is like an old fellow in Texas, who had sixty thousand dollars in bank and in 1894 during the panic banks began to go under everywhere, and he took the sixty thousand dollars out and carried it home; the next day he carried it back to the bank. He wanted it in the bank, for although it was not the safest place in the world yet he wanted it there rather than at home where it was absolutely unsafe.

Now my friend apparently argues that the Tax Assessor and the Tax Collector will come around and assess more taxes and collect more taxes, because the public examiner would point out in his report the amount an individual had deposited in that bank. Is that true of the national banks today? I know one of them that is supposed to have two hundred and fifty to three hundred thousand dollars, and I think it pays on forty-five or fifty thousand dollars. I do not think the matter of taxes applies any more to these institutions after an examination than it did before.

Now the national banking laws make the individual stockholders liable for an amount equal to the amount of stock that they have in the bank. This Convention voted that proposition down just now. That is a safeguard that the national banking law has placed around the depositors in that national banks. This Convention, however, has voted down a similar proposition to throw that safeguard around the State banks. National banks not only have that safeguard but they have a further safeguard of an examination by a public examiner. This Convention, having said you shall not have the first safeguard for banking institutions, then let us have all the safeguards we can get, and let that safeguard be a public examiner of all banks, trust companies and banking institutions or bankers in the State.

It is very clear that the private banking apparently and the State bankers are the ones who are kicking here today. We do not find the national banks kicking. As has been said by my friend from Greene, they have found the good in this thing, and we big depositors, to the amount of five or ten dollars it may be do not mind having bank examiners know we have got that five or ten dollars in there, but we want it to be safe, or just as near safe as the State of Alabama can make it.

MR. COLEMAN (Greene)—I rise once more in behalf of the public interests. There are a great many communities where you could not do a National banking business profitably at all, particularly in agricultural districts. Under the National banking act any State bank can be converted into a National bank without any trouble. The law is ample, but because of the remoteness from commercial centers, and because of the necessity of supplying funds to the farmer, the bank, by virtue of the State laws, can take security upon his crop, upon his mules, or upon his lands. The bank can furnish him money to run his crop, and you cannot do that under the National banking system, without evading the law, and the State banker would do an honest, straightforward business under the State banking law.

This is the first Convention I have read of, and I read a good deal on the subject, where the people of a State did not interfere to protect their own institutions. Here the purpose seems to be to strike down, as far as possible, your State banks, and elevate your National banks. The very purpose of the amendment offered by the distinguished delegate from Montgomery is looking forward to a time when State banks can do a business upon other lines. You could not carry on that kind of a business under the National banking system. You could not issue State bonds. Nothing but National bonds would do, and it seems to me it is time to call a halt. You now have your State examiner provided for. You have now a duty imposed upon State banks, twice a year to furnish a sworn statement, and now you propose to hamper these country banks still further. I say, Mr. President, and delegates of this Convention, not only is this legislation, but if you desire to keep in a satisfactory condition, and perpetuate your State institutions, it is time to withdraw burdens from them.

MR. HENDERSON (Pike)—I do not think there is any necessity of making an exception as to National banks, as proposed in the amendment, because the State has no authority over National banks in any way.

Should this State adopt the system, requiring examiners for the banks, those examiners could not examine a National bank, notwithstanding it were not excepted from this provision.

Now there seems to be an erroneous idea upon the part of some of the members of this Convention as to the purpose of the examination of National banks. They are examined to show whether or not the officers of the bank have complied with the National banking law, which law prohibits the National banks from lending money to any one person—

MR. MALONE—Do you say that the prime motive is not to find out whether the bank is insolvent or not?

MR. HENDERSON—I mean exactly what I said, that is to ascertain whether there is a violation of the National banking law by the officers of the National bank.

That law provides that a National bank shall not lend more than one-tenth of its capital stock to any one firm, corporation or individual. The examination, in one sense, is for the purpose of seeing whether that law is violated. Another provision of the National banking law is that a certain percentage of the deposits shall be kept on hand in cash. The National bank examiner goes to the bank and the very first thing that he does is to tell the cashier to hand over the keys to his chest or money safe, and the next thing he says is: "Hand me your keys to your bills receivable." The examiner never informs the cashier in advance that he has come, and this is for the purpose of keeping the cashier from replenishing his cash from other sources, after he finds that the examiner is in town, and in handing over his keys to the bills receivable it is to prevent him from substituting or swapping notes, in order to cover up some error or some mistake or fraud, he is trying to perpetrate upon the government.

Now we have no State banking law in this State except the general provision that persons can associate themselves together and organize a bank under the banking law. The State does not provide that a State bank shall only lend a certain percentage of its money or capital, to any one firm, corporation or individual. The bank can absolutely lend all of its money, capital and deposits, to one firm, corporation or individual, and it is not in violation of any State law. Then, what is the purpose of the examination?

Speaking of the amendment, why should the State seek to investigate the affairs of a private bank any more than it should seek to investigate the affairs of any other private business? The private bank is not operating under a State law, but is operating as any other individual conducts his private business, and people put their money into private banks, State banks and National banks because of the confidence they have, and not because the banks are examined.

As an instance I will read to this Convention some comments of the American Banker on the recent failure of the Seventh Na-

tional Bank of New York. This is read for the purpose of carrying out my argument, showing that it is not a matter of examination which causes people to put their money in banks, but simply a matter of confidence in the management, confidence in the managers, or because of personal or political influences.

"In the absence of an official statement from the temporary receiver, it is impossible to do more than suggest the possible causes of the suspension of the Seventh National Bank. It will be recalled that in May, 1899, the control of this institution passed from the hands of a body of men who had managed it with the utmost conservatism, into the charge of men of quite a different type—the pushing, ambitious, enthusiastic type. Among them there were several gentlemen whose political associations gave promise of public business. Under the new management the deposits of the bank rose rapidly. An energetic canvass for interior bank accounts steadily increased the resources of the institution from that quarter. The president under the new regime was William H. Kimball, the National bank examiner of New York, a man of whom it cannot be said that he lacked either knowledge or ability. The Board of Directors was made up of gentlemen of first-rate standing, as their names show. \* \* \* with the forces thus at work in the interest of the Seventh National Bank the deposits rose in two years from \$1,600,000 to \$6,500,000."

Now, Mr. President, the condition of the Seventh National Bank was discovered not by the examination of an officer, but it was because of the inability of the bank to meet its obligations to the New York Clearing House on a certain day. In other words they delayed settlement, which was not their usual custom. They delayed meeting a large draft against them by the Clearing House on a certain day.

MR. MALONE—Isn't it the fact that the bank failed because they loaned one concern, in violation of law, \$1,600,000?

MR. HENDERSON—I will answer that in time. Now because this bank was late in meeting its obligation for something over \$1,000,000 through the New York Clearing House upon a particular day, not because they did not meet it, for they did meet it, but because they delayed in meeting it, contrary to their usual custom, the State bank examiner was sent to make an investigation, and when he made his examination he found that this particular bank, the Seventh National Bank of New York had loaned one firm in the city of New York \$1,600,000 when its capital was only \$300,000. Under the banking law it should not have loaned this firm but \$30,000, and in fact it did lend them \$1,600,000. I say this to show you that it was not primarily because of the examination of the officer that it was discovered the bank had violated the law, but because he was sent there to examine this bank, the bank having failed to meet its obligations, as was its usual custom.



THE PRESIDENT—The time of the gentleman has expired.

MR. O'NEAL (Lauderdale)—I do not think the purpose of this amendment is to strike down the interests of the private banks, but rather to increase their efficiency and usefulness. Now the gentleman says in his argument that the system of examination of the National Government for National banks has proven utterly inefficient. It is strange to me that if the system which now prevails has been as inefficient as the gentleman claims, that Congress still retains it.

The experience of every man who has any familiarity with National banks shows that it is a safeguard against fraud and corruption and insolvency. That is all we seek. What is a private bank? This amendment just says that a private bank must be put in the same category as the incorporated bank. The private banker asks the public to deposit money with him; they invite the widow, the orphan, the helpless and ignorant, to come and deposit their money with him, and we simply ask that the same safeguards and same protection should be accorded to the depositors in a private bank, that are guaranteed to the depositors in an incorporated bank. The experience of every community shows the necessity of this action. In my own town, a bank that did the business of the whole valley, that had been insolvent for over twelve months, received deposits up to the very hour it closed its doors. If this examination had been made and the fact that it was utterly insolvent had been known thousands of poor, helpless people would have been saved from ruin and penury, and yet, as the gentleman from Greene says, that banker had the confidence of the entire community. He was a man of standing and had the confidence of the business public. They deposited their money there, on account of the implicit confidence in his high character and integrity, and knowledge of the business, and yet that bank failed and men deposited their money there up to the very last moment. Private banks were organized in our communities up there without a dollar of capital, and who became the victims of these institutions? Not the shrewd business man, but the ignorant and the unwary, the poor working man, and it is our duty to throw safeguards around that class of people in this State. That is our purpose. The shrewd business man may ascertain the condition of the banker, when the bank doors are swung open inviting the public to make deposits, but the poor and the ignorant go and make their deposits when in fact the bank may at the very time be absolutely insolvent, simply spreading a net to catch the unwary. I say that not a single argument can be made here in favor of exempting private banks from this examination. The same argument which applies to an incorporated bank would apply to a private bank.

MR. COLEMAN (Greene)—Don't you know that with a private association not incorporated, the parties are liable for every dollars' worth of property they have?

MR. O'NEAL—Yes, of course I know they are liable, but they may be insolvent, and if the fact of their insolvency were known, the public would not make deposits, and the public would not be robbed as is sometimes the case. I have known instance after instance where the public was simply robbed, because the condition of the bank was unknown. If these reports are made and the public are informed of their condition, then we take it out of their power to perpetrate a fraud of that character. So the principal purpose of these examinations by the national government, is not to see that the officers have complied with the laws on the subject of banking, but it is to acquaint the public with the fact of whether or not the institution is solvent or insolvent. Let the private banker make known his resources and then the public can determine whether he is solvent or insolvent, and then if they do not want to deposit they need not do so, and if they make a deposit they do it with their eyes open.

MR. COLEMAN (Greene) — Did you ever hear of a National Bank Examiner making any report on a bank?

MR. O'NEAL—He does not make a report, but he makes the examination, and he ascertains its condition, he knows if it is insolvent or violates the law, and makes it known to the Comptroller of the Currency, and if the banking institution is violating the law, or if it is insolvent, it is closed, and so if a private institution is insolvent, it ought to be closed, and closed by the State of Alabama.

MR. deGRAFFENREID—Don't you know that a National Bank Examiner does not pass upon the value of the securities of the bank, the notes and other evidences of debt that they hold?

MR. O'NEAL—Why, I think that the National Bank examining system can be improved, and ought to be improved, and I am satisfied that the legislature of Alabama will improve it. I do not think all the virtue and wisdom is in the United States Government. I think the legislature of Alabama, can take advantage of the defects, if any exist, in the system now prevailing with reference to national banks, and they can inaugurate a system more perfect in Alabama than that which now prevails under the national government.

Before my time expires, I move the previous question on this amendment.

Upon a vote being taken the main question was ordered, and upon a further vote the section was adopted.

MR. FLETCHER—I move that the article be engrossed and ordered to a third reading.

Upon a vote being taken the motion was carried.

MR. DAVIS (Etowah)—I move that we adjourn.

THE PRESIDENT—The next order of business will be the consideration of the report of the Committee on Legislative Department.

MR. OATES—As the time is so short before adjournment, leaving but a few minutes, I hope the motion made by the gentleman to adjourn will prevail, because I do not think anything will be gained by entering upon the consideration of the report this evening.

Upon a vote being taken, the Convention adjourned.

#### CORRECTION

The proceedings of the forty-fourth day in seventh column on first page, the remarks of Mr. Malone should read as follows:

Mr. Reynolds is not here, he is at heart with us. It is fair to state that a great many in the upper end of his county, which is nine miles from the extreme upper end, and sixty from the lower end, are not all in favor of it. I made a canvass up there against the strongest man in Henry County and I got something like 40 per cent of his vote in his own beat, but not a majority.

On first column of second page in the remarks of the same gentleman the verbs should be changed from present to past tense to make the sentence read as follows:

As a further illustration of this idea there were five banks in the county doing a fair business and they were paying tax only on \$5,000 on an average. One bank with \$50,000 capital was paying taxes on \$9,000 of property. The reason of this was that the sections are so far from the county seat that no one looks after it.

See in remarks of Mr. Sollie on a question of personal privilege in first column of today's report.

## FORTY-SIXTH DAY

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MONTGOMERY, ALA.

Tuesday, July 16, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. C. B. Daniel, as follows:

Almighty God, we come openly and boldly to a throne of mercy to find grace to help in time of need. We beseech Thee to bless this Convention in all their deliberations this day. According to our individual necessities let Thy grace come to us this day. We ask Thee to come into our heart and see our need exactly, and supply our want out of Thy grace, that we may not be hindrances to one another, but helps; that we may throw no cloud upon each others path, but all the possible sunshine and joy. Help us to "bear one anothers burdens, and so fulfill the law of Christ." In our prayers we would remember our loved ones at home, the sick, the weary shut up with pain, the poor, the desolate, the feeble, the infirm, the friendless. The Lord's blessings be upon this city, this State, the whole earth—its nations and peoples and tongues and languages. We ask these blessings through the merits of our Lord and Savior, Jesus Christ. Amen.

Upon the call of the roll 120 delegates responded to their names.

Leaves of absence were granted as follows: Mr. Ashcraft, today and until noon tomorrow; Mr. MacA. Smith for today; Mr. Graham (Talladega) for today; indefinite leave for Mr. Beavers on account of sickness.

Mr. Cobb (Macon) here took the chair.

THE PRESIDENT PRO TEM—The secretary will call the roll of delegates for the introduction of ordinances, resolutions, etc.

MR. deGRAFFENREID—I move that the call of the roll this morning for the introduction of ordinances be dispensed with, and that the rules be suspended for the purpose of making that motion.

MR. SAMFORD (Pike)—Before that is put I ask unanimous consent to introduce a short resolution and have it referred.

The consent was given and the resolution was read as follows:

Resolution No. 246:

Resolved, That the General Assembly of this State is hereby instructed at its next session to reduce the tag tax on fertilizers to an amount not to exceed 10 cents per ton.

MR. SAMFORD (Pike)—I ask that the resolution be referred to the Committee on Amending the Constitution and Miscellaneous Provisions.

And the resolution was so referred.

Upon a vote being taken the rules were suspended and the call of the roll of delegates dispensed with.

MR. KNOX—Mr. President, I desire to make a report for the Committee on Rules.

The same was read as follows:

Resolution No. 247, by Committee on Rules:

Resolved, That the report of the Committee on Suffrage be taken up for consideration by the Convention immediately after the reading of the Journal on Tuesday, July 23d, unless sooner reached in its regular order; provided that if the Convention on that day has under consideration the report of any other standing committee such report shall be laid aside and shall be again taken up as soon as the article on Suffrage and Elections has been disposed of.

MR. KNOX—The resolution just offered is in accordance with the action of the Democratic caucus by which this matter was considered, and the Committee on Rules direct me to report that resolution to carry their action into effect. I therefore move the adoption of the resolution, and upon that I move the previous question.

Upon a vote being taken the main question was ordered, and upon a further vote the resolution was adopted.

The report of the Committee on Journal was read:

MR. BROWNE—I desire to call attention to an error in the Journal. Mr. Banks is shown to have voted no on a motion made by me to lay upon the table the minority report—

MR. KIRKLAND—I rise to a point of order. The question before the House is the adoption or rejection of the report of the Committee on the Journal.

MR. BROWNE—I rise for the purpose of showing that the Journal is incorrect.

MR. KIRKLAND—I misunderstood the gentleman from Talladega.

MR. BROWNE—The Journal shows that Mr. Banks voted no upon the motion made by me to lay upon the table the minority report in the Shelby matter. Mr. Banks is not present, but he did vote no, and immediately thereafter changed his vote to aye. I call on the gentleman from Calhoun (Mr. Martin) to substantiate my statement, as he sat next to him. Is that not correct?

MR. KIRKLAND (Dale)—I cannot state. I was not here and do not know whether that was the case or not, but I was informed by Mr. Julian, the secretary, that the report of the Committee on the Journal is correct, and the Journal itself is correct and that the gentleman, Mr. Banks, I believe it is, would answer that the Journal is in fact correct.

MR. BROWNE — I state, Mr. President, that I distinctly heard the gentleman vote from my seat over here. He did vote no, and the secretary could not hear, because he went on with the calling of other names, but Mr. Banks immediately afterwards said I voted aye, and the gentleman from Calhoun, Mr. Martin, who was sitting close to him, can corroborate my statement.

MR. MARTIN—That is my recollection of the matter.

MR. BROWNE—I do not desire to change his vote, but I desire the Journal to speak the truth. He did change his vote from no to aye, and the secretary did not catch it as he was calling the roll.

MR. deGRAFFENREID—If I am in order I move that the matter as to how Mr. Banks voted be deferred to some other time when Mr. Banks is present, and he then be allowed to say how he did vote upon that question.

MR. BROWNE—I am perfectly willing to that, so the Journal is not approved as it stands.

THE PRESIDENT PRO TEM. — The question is on the adoption of the report of the Committee on the Journal.

Upon a vote being taken the report was adopted.

The President here resumed the chair.

MR. LONG (Butler)—I rise to a question of personal privilege.

THE PRESIDENT—The gentleman will state the question of privilege.

MR. LONG (Butler)—In the stenographic report of yesterday the stenographer has me voting no on this question. I will state that I was not in the hall at the time and did not vote at all. If I had been here I would have noted no and I am perfectly satisfied with the report as given, but I do not know at what future time

the stenographer may see fit to use my proxy and vote me, and I object to his voting me without my knowledge and consent.

MR. KIRKLAND—I rise to a question of personal privilege.

THE PRESIDENT—The gentleman will state the question of privilege.

MR. KIRKLAND—On last Saturday, as the roll of this convention will show, I was not present. I expect it will show that I was not present by reason of leave that I had obtained from this Convention. At that time the consideration of the report of the Committee on State and County Boundaries was up for consideration, and in the course of the debate, the gentleman from Henry offered a resolution, amending the report of that Committee, and in his address to this convention, stated that I had assisted in preparing that resolution. During the course of the debate before this Convention the gentleman from Coffee, whom I take it assumed to act for the constituency that I represent, also made the same assertion that I was present and assisted in the preparation of that resolution. I deny before this Convention, that I had any connection whatever with the preparation of the resolution, but if I had been here I state I would have voted for its adoption. I just want the record to show that is the case. I did not help to prepare it. I was in favor of the motion and would have voted for it, if I had been here, and I only want the record to show that. Further I want to state that I understand it has been said that I left because of this matter. I do not know what gentleman on the floor has done it but it has been brought to me that it has been charged by members of the Convention, that I left here to dodge this issue. I state Mr. President that I have never yet been known to dodge any issue. I always do my fighting open and above board, where every man may see and know what I do, and may always be able to place his finger upon me, and always find me contending for what I conceive to be my duty. If I had been here, I repeat I would have voted for this resolution, and I do not see how that can be said to be dodging the question.

MR. MALONE—I rise to a question of personal privilege.

MR. ROGERS (Sumter)—I pursuance of the motion which I made on yesterday that I would move a reconsideration today of Section 8 of the Article on Banks and Banking, I would be pleased to have the clerk to read it.

The Chair recognized the gentleman from Henry.

MR. MALONE—I want to explain that I made the statement in the language quoted in the stenographic report, and I want to say that I went to Mr. Kirkland and said that we did not know, judging by the action of the Convention on these former reports, what the action of the Convention will be, and I always like to be

prepared for a defeat, and want to draw up a bill to offer in the event we get beat. He said he did not want to have anything to do with establishing the lines down there, and I said let me put in a provision that these lines are temporary, and let us make the law as elastic as possible for legislation. He said I think there is some merit in that. I won't say what I will do, but you go and draw up a resolution and bring it to me and I will look over it. I went off and drew up the identical resolution, the very paper, and carried it back to Mr. Kirkland, and he said I think that covers the ground and it is all right. Now as far as dodging the question, it is the reverse. I stated in advance to Mr. Kirkland, and had given him my word that I would not attempt to do anything, that he could feel assured that no advantage would be taken of him and instead of dodging the question it was a question of confidence in carrying out the agreement. I believe those are about the conditions.

MR. KIRKLAND—I think that is about right. I think you understood that I had agreed to the drawing up of the resolution, but it was the statement in the stenographic report that I assisted in drawing the resolution. I deny that I assisted in drawing it.

MR. MALONE—I expect that I am to blame for that, but it took place just about as you and I agree now.

MR. BANKS—I understood since I came into the hall that I am recorded as voting no on the proposition to table the minority report of the Committee on County Boundaries. If the President remembers, I called his attention to the mistake I made at the time, and asked to have my vote changed.

THE PRESIDENT—The Chair distinctly heard the correction of the gentleman from Russell, but the Secretary, in calling the roll, his mind being upon that, failed to hear the remark of the gentleman. The correction will be made.

MR. ROGERS (Sumter)—The question now under consideration is a motion to reconsider Section 8 of the article on Banks and Banking, which I will have the clerk to read.

The section was read as follows :

Sec. 8. The General Assembly shall by appropriate laws, provide for the examination by some public officer, of all banks and banking institutions and trust companies engaged in banking business in this State. And each of such banking companies or institutions shall through its president or such other officer as the General Assembly may designate under oath make a report of its resources and liabilities at least twice a year.

Now Mr. President, because there is a system of examination of national banks operating in the State of Alabama, this provi-



sion has upon its face the appearance of being just, but the examination made of national banks and the report which goes only to the Comptroller of the Currency at Washington, bears no resemblance to this system of police espionage which you propose to place upon the private institutions of the State of Alabama. Yesterday this discussion took something of a personal nature, as a question between the rights of the national bank and the private bankers who occupied seats on this floor. That was unfortunate because we are apt to judge men from our own mean natures or from the bounty of our virtues. Now I wish to say in this connection, that I have no connection whatever with any bank, national, State or private, in the State of Alabama. I am so unfortunate at this time, gentlemen, as to not even have any deposits in any of the banks of the State of Alabama, but I am making this proposition because I see the result that it will inevitably have upon the private banking institutions of the State. Whenever you clothe the Governor, or any other authority in the State of Alabama, with the power to send a man out all over the State to examine into the private affairs of its citizens, you give him the power to strike down that institution, because when that report is submitted to him, if he chooses to do so, and who doubts but what in instances he will choose to do so, submit this report to the tax collectors of the State of Alabama, and they will thereby be enabled to jump on the deposits of citizens in this bank.

Gentlemen, it is unfortunate in the State of Alabama that we have a great many citizens who have money who try to escape taxation, but gentlemen a great many of us are like Tom L. Johnson. We fight for principles when they are not in existence, but we have got to do business in accordance with human nature as we find it, and not like we would like to make it. So gentlemen, if you do have this examination of State Banks, you will inevitably drive the private banking institutions of the State out of business, and the State banks will change their charters and go into the national banking system, because it is a very easy matter to make such change. Do not deceive yourselves at all with the idea that this system of examination bears any resemblance to the system of examination of national banks in this State. They are just as different as night is from day. In one case the government of the United States sends an examiner, who look into the solvency of the institution and reports to the Comptroller of the Currency at Washington. In the other case you send a man who takes up the private affairs of the banker or banking institution, and find out the number and amount of deposits in the bank, and submits it to the Governor. We have no laws upon the subject of banking institutions in the State of Alabama, except a general provision that banks may constitute themselves into corporations to do business. Then what is the sense of putting this ordinance

in there, unless you connect it with the general system? I submit that this is purely a legislative matter, and should be left to the Legislature of the State of Alabama.

MR. REESE—Will the gentleman allow a question?

MR. ROGERS (Sumter)—With the greatest pleasure.

MR. REESE—Would not it be a good idea to make the county tax commissioner ex officio bank examiner?

MR. ROGERS (Sumter)—If you want to have it so that a man can go into the private affairs of everybody because he is an officer, it does not make any difference what particular officer is clothed with this power. You might give it to the Sheriff or the Probate Judge, or to any other officer. I was going to say Mr. President, something has been said about arraying influences against the adoption of this Constitution—

MR. BAREFIELD—I would like to ask the gentleman if a man has a thousand dollars on deposit in a bank and a man has forty acres of land, why tax his land out here, and allow the man with the thousand dollars to escape taxation?

MR. ROGERS (Sumter)—I am afraid that the gentleman from Monroe is playing to the galleries this morning. I am not in favor of the thousand dollars escaping taxation, but I say this, if you tax it in a State bank, or a private bank, the man will withdraw it and put it in the National bank, where it will escape taxation. That is the proposition and not a proposition that anybody that has got money should escape taxation.

I was going on to say, it seems to me that we have said a great deal in this Convention here about arraying influences against the adoption of this Constitution. I am not in favor of keeping out, or putting anything into this Constitution merely upon grounds of expediency, but, Mr. President, we will have to submit this instrument to the people of Alabama for ratification and I tell you you can look well towards putting any proposition in there which will submit the citizens of this State to annoyance. What private bank is going to gladly and willingly and cheerfully accept a provision which he knows is going to put his competitor in the National banking business on the opposite side of the street to him at a great advantage? Why, in the city of Tuscaloosa, where one of the members of this committee resides, who favors this report, there is an institution which has been established there for 50 years; it is a private banking institution, and if this machinery is put into operation, it will work greatly to the disadvantage of that private institution. Down in the city of Dothan, if you please, there are two gentlemen, one who has just retired from the State banking business, and gone into the National banking business, and his competitor across the way was going to look with

approval and glad welcome upon a provision which this gentleman fought himself when he was in that business, and now approves? I tell you you are going outside the rights of this Convention. We are going into the Legislative Department, and I hope that the Convention will reconsider the proposition, which at least bears all the ear marks of private interest which is desired to be perpetuated in this Constitution, the great fundamental law of this State.

MR. O'NEAL (Lauderdale) — 'The gentleman from Sumter says this is purely a legislative matter. If this is a matter entirely within the domain of the Legislature, it is very singular that body has never given the people of Alabama any relief in reference to this important question. We know that for over a quarter of a century there has absolutely been no examination of private banks in this State. We know that one reason that private banks have not prospered in Alabama is due to the fact that there is absolutely no protection afforded to the depositors in those institutions.

MR. ROGERS (Sumter)—If the gentleman will permit an interruption, the reason why National banks have succeeded in this State as opposed to the private banking institutions, is because the government of the United States permits the bonds of the United States to draw interest, while deposited for security, and he thereby gets double interest upon his money.

MR. O'NEAL—Yes, but the private banks have a great many powers which the National banks cannot exercise. They can lend money on bonds and securities which are absolutely prohibited to National banks, and I say I but voice the sentiment of every citizen of the State, who has had connection with these institutions, that sufficient safeguards are not thrown around the deposits, and those who have dealings with those institution—

Mr. deGraffenreid addressed the chair.

THE PRESIDENT—Does the gentleman yield to the gentleman from Hale?

MR. O'NEIL—I will in a moment. I cannot make an argument and answer questions every second. Let me finish the argument.

Now suppose an effort is made in the Legislature to create a bank examiner, what is the result? The result is the managers of these institutions flock to the Legislature, and by their influence prevent any action, whereas the depositors, the parties that are interested, will not take the trouble to come here and make any demands on the Legislature.

Now an institution of that kind, if it is insolvent, can still continue business. I remember an instance of that kind. A private bank after the bank had failed, refused to pay check after check, though its doors were open, and they were ready to receive money from any depositor, but absolutely declined to pay any checks that might be presented. Why, under the system that prevails in the government service of the United States, that would not be tolerated a moment. After a bank becomes insolvent it is put in the hands of a receiver.

The gentleman says that this will be an unpopular matter with the people of Alabama. That it will array opposition to the ratification of the Constitution. In my judgment the most popular thing we could do if we look at it purely from that standpoint, would be to say to the people of Alabama you may deposit your money in private banks and you shall enjoy the same safeguards and protection that are given to depositors in National institutions. Say to those who deposit their little mites in these private banks, because in many places there are no banking institutions, you have a right to go and read the papers and ascertain the condition of the institution, whether it is solvent or insolvent, and it shall no longer be a net to draw in the unwary, the ignorant and the poor.

Now I have no connection with a bank of any kind, State or National. The only connection I have unfortunately is to frequently be on the wrong side of the ledger, but this is a matter of principle, and I think that a measure of this kind is demanded by the people of Alabama. I think a measure of this kind will go far towards letting the people of Alabama understand that we are here to protect the great masses of people, uninfluenced by power, or by any institutions of this kind. Why the gentleman intimates that if we undertake to pass this measure, if we undertake to say that these institutions must be examined, it will array all these private institutions against the ratification of the Constitution. I am sure that argument will not prevail with this Convention. Are we to truckle to any class of people in this State. Are we to falter in the discharge of our honest duty, because it may array the moneyed classes against the ratification of this Constitution? When we pander to the moneyed classes to an extent that we do injustice to the great masses of the people in Alabama, then we ought to be condemned. Why the gentleman says it will be expensive and the State Examiners—

MR. REESE—Does the gentleman think it wise or expedient that we should multiply issues which might become unpopular and might work against the ratification of this Constitution?

MR. O'NEAL—No, I do not think it wise to multiply issues. We are not multiplying issues. We are simply passing such a bank law as exists in every other State almost. We simply pass a

law to furnish protection to the public, and it is our duty to do that. We do not intend to do any injustice to any private bank, or any private banking institution. If I believed, with the gentleman from Sumter, that the effect of this law would be to injure any of these institutions, I would certainly oppose it, but I think he is under a misapprehension. I think that such legislation as this, or such a Constitutional provision, would go far towards restoring the confidence of the public in such institutions, and making them strong and powerful in Alabama. That is my honest judgment.

Now in reference to the matter of expense. We have in this State a number of examiners, appointed by the Governor. Examiners who are skilled accountants, and whose business it is to examine the State and State officials. Why could not these examiners perform these duties without any additional expense? It could be done without a dollar of expense to the State. The State is now paying these examiners-----

MR. ROGERS (Sumter)--I have not said anything about expense.

MR. O'NEAL (Lauderdale)--The argument has been made here in opposition to this section that it would entail useless expense, unnecessary expense upon the people of Alabama, and create a number of unnecessary offices. I say in answer to that argument, that the bank examiners appointed now by the Governor, receiving a salary, could be ordered by him to make an examination without a dollar's additional cost to the people of Alabama.

THE PRESIDENT--The gentleman's time has expired.

MR. FLETCHER -- The purpose of the Committee in the adoption of that Section was the protection of the people. We thought as a matter of fact that private individuals where confidence was reposed in them by people depositing money with them would certainly have no objection to making an exhibit of the fidelity and good faith with which they acted in reference to their money. We do not propose to take advantage of any private institution in the State of Alabama, nor had we any purpose to reflect on any private banking institution of Alabama. Our only purpose was for the protection of the people. Private banks, like public ones, ought not to have any objections to making an exhibit to the people who have had confidence in them and who have placed their money with them. Now, Mr. President, this matter has consumed enough of the time of this Convention and it was fully discussed on yesterday and adopted by the Convention, and I move to lay the motion to reconsider on the table.

MR. ROGERS (Sumter)--Under a proposition to lay upon the table as the mover of this resolution, have I not a right to close?

THE PRESIDENT—The question is upon the motion of the gentleman from Madison to lay upon the table the motion to reconsider. As many as favor the motion to table will say aye, and those opposed no. It seems to the Chair the ayes have it,—the ayes have it.

MR. ROGERS—Division.

MR. O'NEAL—I make the point of order that the gentleman did not make a call for a division until the President had stated that the ayes had it,—that was before the call for division was made.

MR. WILLIAMS (Marengo)—I hope the Chair will allow the division.

MR. ROGERS—I call for a division and await the pleasure of the Chair; it is purely for the Chair to decide; and I am perfectly willing to repose in the justice of the Chair without any interference from you gentlemen on the other side.

THE PRESIDENT—The Chair paused after announcing that it seemed to the Chair that the ayes had it, and looked in the direction of the gentlemen from Sumter, supposing that probably a division might be called for. The gentleman did not rise, and the Chair thereupon made the announcement of the Result.

MR. GRANT—I called for a division before the decision was made.

MR. O'NEAL—I withdraw my point of order.

THE PRESIDENT—The Chair will submit the question of a division to the Convention.

A vote being taken there were fifty-five ayes to forty-three noes and the motion to table prevailed.

MR. WILSON (Washington)—I regret to recur to a matter that has been so decidedly settled by this Convention, and it is not for the purpose of reconsidering or in any manner changing the vote on the main question, but simply to offer an amendment that I concede to be just, equitable and fair.

THE PRESIDENT—For what purpose does the gentleman rise?

MR. WILSON—I rise to move a reconsideration of the vote by which Section 6 of the article on State and County Boundaries was adopted yesterday.

THE PRESIDENT—Did the gentleman vote in favor of it?

MR. WILSON—Yes, sir, the gentleman did for that purpose.

**THE PRESIDENT**—The question will be upon the motion to reconsider the vote by which this Convention adopted the report of the Committee on State and County Boundaries, Section 6.

**MR. WILSON**—I am not here to criticise the action of this Convention on yesterday in annulling the act providing for the removal of the court house of Shelby county, on the contrary, I think in the main that action is correct, on the ground that I consider it against public policy to take from a people the right of a voice in these matters, but as this Convention has set out to do the fair thing, I believe that they will remove all doubt on the proposition that they mean in fact and in truth to do what is fair and proper. Now, Mr. President, in Section 6, as adopted, relative to that Shelby county matter, we have put ourselves in the attitude of correcting the errors of the Legislature in order that justice might be done. Let us not go so straight up that we will lean the other way. The proposition I refer to is simply this, there is a provision in Section 6 as reported and as adopted that the court house shall remain at Columbiana until removed by a vote of the people under the provisions of an act approved February 9, and the act amendatory thereto of February 20, 1899. Now, Mr. President, I do not propose to go into the motives of either of the parties to this contest. That has been settled, but I do say, and I say that it does not take any very learned lawyer to see and understand the proposition, that it is clearly within the power of the Commissioners of Shelby county to issue their warrants and erect a \$50,000 court house at Columbiana before the people of Shelby county have a voice in the matter, if they see fit to do so. I don't mean to charge that they will do this at all, but I simply say that it is clearly within the power of that body to do it, and as we have stepped in and said to one side you shall not move this court house until the people have had a voice in the matter, then I say it is only fair to say to the other side that neither shall you erect an expensive court house at Columbiana until the people of Shelby county shall have had a voice by a vote of the qualified electors of that county. Mr. President, for this reason, and for no other, I ask this Convention to reconsider that vote, and if that vote is reconsidered I will offer this amendment: "Amend Section 6 by adding the following:

"Provided further, that no new court house shall be erected at Calera or Columbiana unless the question has been submitted to a vote of the qualified electors of Shelby county within the time and under the provisions of an act to provide for the permanent location of the county seat of Shelby county, approved February 9, 1899, and an act amendatory thereto approved February 20, 1899."

**MR. SMITH (Mobile)**—I voted in favor of the report of the committee. I am satisfied from the investigation made by the committee that in fact and in truth no act of the General Assem-

bly was passed authorizing the removal of this court house, and I am satisfied from the report of that committee, and what I heard in regard to that matter, that it was made to appear that there was such an act of removal simply by virtue of fraud and, therefore, although I was opposed to introducing such matters, which I considered largely legislative in the Constitution, yet I deemed this to be so extreme a case as justified us in voting in favor of the report of the committee. I have no regrets whatever upon the subject, if I had it to do over again, I should certainly vote in favor of that report. But the suggestion now comes that an advantage will be taken of the delay which we have made in this matter in the interest of justice, and that in the heat of the struggle and in the feeling of injustice that has been done to Columbiana, they will feel justified in taking almost any measure—

MR. WILSON—"Could" be taken, not "will be.

MR. SMITH—I am speaking for myself. There is a feeling that they would be justified in taking almost any steps in order to prevent the people who had ill treated them and fraudulently in regard to this matter, and that they would feel justified in doing it under the circumstances which exist, when they would not take that step under other circumstances, and, in order to defeat the people of Calera, should they have a majority of the county in their favor, they might go to work and erect expensive buildings and thereby put a penalty upon the removal if it should happen that the county was in favor of it, and that Board would simply shift part of the responsibility from one shoulder to another, to take the benefits of a fraud which the report of the committee says was perpetrated by those interested in Calera, and afford an opportunity to those interested in Columbiana to perpetrate, not to the same extent, but a similar fraud, so far as my view goes, in the same controversy. I am opposed to giving either of these parties any undue advantages in this controversy, and I think, therefore, that now that we have made the delay, now that we have corrected the fraud that was perpetrated in the Legislature, we ought to tie the hands of both parties until a vote can be had in the county, and the people can say where they want the court house erected. The amendment which the gentleman showed me this morning seems to be fair, and seems to carry out that purpose, as it merely restricts the erection of buildings at either of these controverted points until the matter can be determined by the people. I am in favor of reconsideration for the purpose of considering that amendment, and when introduced, I shall again vote for the report of the committee.

MR. GRANT (Calhoun)—I voted for this proposition from a broader point of view than seems to be entertained by the gentleman from Mobile. I want to say to this Convention frankly that if I had supposed that we were here settling a mere court



house controversy between Calera and Columbiana, that I would have voted against the proposition to put this thing in the Constitution. I voted for the proposition upon the ground that a fraud had been perpetrated upon the whole State of Alabama, and that the Legislature, the highest law-making body of the people, had been outraged in the passage of the bill. Now, if we are to descend from that position to arrange the details of a settlement between these two villages as to whether or not the court house should ultimately go to one or the other, I think we have left the high ground upon which we acted. Now, I don't think, Mr. President, that if you would put the proposition of a local measure before this body that it would have any consideration whatever, no matter what the merits of the case were. The sole consideration to my mind that governed this body was that here a fraud had been put upon the whole people of the State of Alabama, and that from that fact it became a State question, and we set a good example—rather, we put a peremptory mandamus against operations of this kind in legislation any more. Now, if we reconsider this question and begin to arrange the details as to whether the Commissioners' Court of Shelby County may erect a court house at Columbiana, or may not, or what the people of Calera have done, we descend from the mountain the altitude of our position, descend to the merest trivialities of detail and get down to local legislation in fact, and I, therefore, am opposed to a reconsideration.

MR. deGRAFFENREID—May I ask the gentleman a question before he takes his seat?

THE PRESIDENT—Will the gentleman permit a question?

MR. GRANT—Yes, sir.

MR. deGRAFFENREID—Isn't it a fact that this Convention has already provided in another article that no county can issue bonds without a vote of the people?

MR. GRANT—I think so.

MR. deGRAFFENREID—Wouldn't it, therefore, be impossible for Shelby County to erect a court house anywhere without borrowing money?

MR. GRANT—I think so.

MR. WILSON (Washington)—Is it not a fact that the County Commissioners in any county have a right to issue their warrants to any amount?

MR. GRANT—I don't know about that.

MR. WILSON—I would like to state for the gentleman's information that in my county of Washington, we have just built

a \$5,000 jail without any bonds—on warrants only. And isn't it a fact that this provision the gentleman from Hale is talking about is not yet a law and will not become a law until this Constitution is ratified by the people of Alabama.

MR. COLEMAN (Greene)—I voted against the adoption of this section upon the ground that I thought the matter rightly belonged to the Legislature. I rise now for the purpose of calling attention to a construction that might be placed upon the section. Some may think it rather far-fetched or technical, but nevertheless it admits of an argument, and I am not prepared to say that this section goes too far in its present shape. I would vote for the reconsideration that it might be amended, and I desire to call the attention of the delegates to the reading of this section: 'Provided, that the county site of Shelby County, in this State, shall be and remain at Columbiana unless removed by vote of the people as provided for in an act entitled 'An act to provide for the permanent location of the county site of Shelby County by a vote of the qualified electors of said county, approved, the 9th of February, 1899, and an act amendatory thereto, approved February 20th, 1899, or by an election held under the provision of this article.'" Now when the court house is removed as provided by the act of 1899 and amendatory act thereto, it can never be removed at any time in the future, however much it may be desired to be removed, unless by an election held under the provisions of this article. Now I will invite the gentleman's attention to show me where there is any provision in this article under which an election can be held. If it had read "or by an election held under the law passed by the legislature in pursuance of carrying out the provisions of this article" it would meet the question, but when it says it cannot be removed except by the act of February, 1899, at all, or by an election held under the provisions of this article, and there is no provision in this article providing for an election, I cannot see, but what we are running some risk. That is the only purpose for which I would vote for the reconsideration—that it might not remain there always.

MR. BROWN (Talladega)—I submit that the Committee used the proper language when they said "or held under the provisions of this article." The provision of the article is, that by law it may be so arranged that they can have that election.

MR. COLEMAN—Will you please point out where it is?

MR. BROWNE—No county seat shall be removed except by a two-thirds vote of the qualified electors in said county." That does not carry itself into operation, but the legislature must carry it into operation, and when the legislature enacts a law, it is in conformity with that provision.

MR. COLEMAN—That is the very point I made, if you will amend it.

MR. BROWNE—It is, as the gentleman said, very far fetched. One of the provisions of this article is that it must be by two-thirds, which is now changed to a bare majority. In answer to the suggestion made by the gentleman from Calhoun, I thought, Mr. President, that all lawyers in this assembly knew that the county could not issue bonds except by direct authority of legislation—that is the law.

MR. WILSON—And did you think that all the lawyers knew that the commissioners could not issue warrants?

MR. BROWNE — The gentleman did not ask in regard to warrants.

MR. WILSON—I beg pardon, I did.

MR. BROWNE—You may have done so afterwards, but you first said bonds. There is no provision in existing law allowing Shelby County to issue any bonds, and therefore they could not build a \$50,000 court house. There was a law passed in this bill allowing the Commissioners of Calera to issue \$35,000 of bonds which this Convention has wiped out. Now the Committee left it so, if they saw fit at any time before the expiration of the law passed two and a half years ago, can within thirty days hold that election, and in the name of Heaven do the gentlemen fear that the Columbiana people can build a \$50,000 court house within thirty days and deprive them of the right under that election of two years ago. The only reason the Committee had in leaving that provision in here was so they could hold the election under the law of three years ago, because the law provided for a majority vote to remove the court house, where the Committee required a two-thirds majority, but now that has been amended by this Convention, so that at any time in the future ten years, as well as within the time prescribed by the other law of three years ago, they can move the court house from Columbiana to Calera or anywhere else by a bare majority of the people.

MR. THOMPSON (Bibb)—On behalf of the Committee I desire to say just a few words on this subject. The argument made by the distinguished gentleman from Greene has been fully met. The words as used by the Committee in this proviso are unambiguous, plain and simple, and we have provided that that court house question may be settled by this act which I have before me, and under that act they can have their election upon thirty days notice, and within thirty-one days hold their election. The matter is now tied up in the courts, nothing can be done prior to the ratification of this Constitution, if the Calera people want an election they can vote under the act approved February 9, 1899. It was their own act, drawn up by their own representative, that is all the security that may be required. Doubtless other gentlemen may not be informed of some of the provisions of that act. In

their own act, passed by the people of Calera, there is a proviso that they did not like the sound of their own production, however, it provides for the deposit of a sum of money as a guaranty before they call that election. No wonder they would like to get that proviso out. I think sufficient time of the Convention has been taken up, and I move to lay the motion to reconsider on the table.

MR. BEDDOW—On that I call for the ayes and noes.

The call was not sustained.

The question then recurred on the motion to table, which was adopted by 62 ayes and 22 noes.

MR. REESE—I ask unanimous consent to introduce a short resolution relative to Senator Pugh.

Unanimous consent was recorded, and the resolution was read by the Clerk as follows:

Resolution 248, by Mr. Reese:

Whereas, Our distinguished citizen and statesman, the Hon. James L. Pugh, now lies upon a bed of sickness.

Resolved, by the people of Alabama in Constitutional Convention assembled, That the sympathy of the Convention is extended to our valued citizen, together with its hope for his speedy recovery.

MR. REESE—I move the suspension of the rules so that resolution be placed upon its immediate passage.

The motion to suspend the rules was carried.

MR. REESE—I move the adoption of the resolution by a rising vote.

The resolution was adopted unanimously on a rising vote.

THE PRESIDENT—The next order of business will be the special order which is consideration of the report of the Committee on Legislative Department.

MR. OATES—The Committee on Legislative Department considered making the present Constitution its basis, and considered all the provisions carefully and well, and saw proper to add some new sections.

I do not think it is necessary for me to consume time to explicitly notice all these changes, in as much as the report and the proposed ordinance has been printed and in the hands of the delegates an ample length of time for everybody to have familiarized themselves with them. Every delegate here is supposed to be familiar with the defects in the provisions of our present Constitution admitting of abuses in the matter of legislation. Of course

every one knows that this department of the State Government is first in importance, the legislative, the medium through which the people of the State have laws enacted, bad laws repealed, and defective laws amended, and in order that there may not be any abuse of this power, it is essential that these statutes should constitute rules of proceeding which will carefully guard against any wrong or reckless and hasty action upon the part of the Legislature or any member thereof, from the vast accumulation of local legislation. We heard on yesterday, or the day before from a gentleman who has the honor of being a member of the House of Representatives, and also a delegate upon this floor, my learned young friend from Crenshaw, as to the manner in which local measures were passed, especially towards the heel of the last session. With but a dozen of the members present, the roll called rapidly, the names of the whole membership for their aye or their no vote, and that it was very rare that any one answered aye or no, and yet the bills were decided to have been passed by a majority vote. Such things ought not to be, and leads to inextricable confusion, and affords opportunities of getting measures before the country the authority of which is doubted by people interested. We had an exhibition on yesterday with regard to one of these local measures. Others may be equally defective. It is very much to the discredit of the General Assembly or Legislature, whichever you see proper to call it, and ought in the future to be avoided. Now, sir, your Committee endeavoring to remedy these things have made changes and tightened up the Rules of Procedure, so that as far as can be done these things will be prevented in the future. As it will become necessary as we go along considering the ordinance, Section by Section to explain each in its turn, I shall not dwell or undertake to do that here, and I want to say furthermore that this Committee consisting of eighteen members besides the Chairman, as a rule are men of experience and learning, and most of whom took an interest in this work, are not in harmony on all the provisions of the report. They differed in opinion. The report, Mr. President, is simply the way that the majority voted. Some points the Chairman is not with the majority, but with the minority, and the course I propose to adopt is that when I reach such a provision, having explained it, to call attention of that member of the Committee who took the lead on the other side, and let him take the management of it where I could not, and ought not, being opposed, to undertake to manage it when my desire is to change it. Then, again, sir, I wish to state to the delegates here, impress upon them, I, as the Chairman, am not going to pursue a course of doggedness. I will endeavor to fully explain to this body the reasons for the changes made from every point, and to respectfully answer any question which any delegate desires to ask, and then if this Convention sees proper to refuse, and set aside the recommendation of the Committee, that is your work, I will have discharged my duty

when I have presented it to you fairly and in a manner which you cannot fail to understand. Now, Mr. President, without consuming any further time, I move that the ordinance be taken up and considered Section by Section.

MR. DENT—I second the motion.

Mr. Robinson here took the Chair.

THE PRESIDENT PRO TEM—The gentleman from Montgomery moves the consideration of the report Section by Section.

And upon a vote being taken the motion prevailed.

The Clerk then read Section 1 as follows:

An Ordinance to create and define the Legislative Department.

Be it ordained by the people of Alabama in Convention assembled, That Article IV. of the Constitution be stricken out, and the following Article inserted in lieu thereof:

#### ARTICLE —.

##### Legislative Department.

Section 1. The Legislative power of the State shall be vested in a Legislature, which shall consist of a Senate and House of Representatives.

MR. OATES—The gentleman will discover a change made in this first Section. I wish to give the Convention the reasons why the Committee has thus recommended: ---

You will see in the present Constitution that this first Section is that the legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and House of Representatives. The words General Assembly are stricken out and the word Legislature recommended by the Committee. In this age of brevity and hurry to accomplish the tasks of life, we do not wish to use words unnecessarily. The old style used in constitutions touching this point were, many of them, very cumbersome; and it is only in the more recent years that changes have been made. I wish to call the attention of the Convention briefly to the constitutions of the different States on this point:

For instance: The State of Illinois—Be it enacted by the people of Illinois, represented in General Assembly.

Idaho—Be it enacted by the Legislature of the State of Idaho.

Georgia—Be it enacted by the General Assembly of the State of Georgia and it is hereby enacted by authority of the same.

Florida—Be it enacted by the Legislature of the State of Florida.

Delaware—Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met as follows:

South Kakota—Be it enacted by the Legislature of the State of South Dakota.

Connecticut—Be it enacted by the Senate and House of Representatives in General Assembly convened.

Colorado—Be it enacted by the General Assembly of Colorado.

California—The people of the State of California represented in Senate and Assembly, do enact as follows:

Arkansas—Be it enacted by the General Assembly of the State of Arkansas.

Wisconsin—The people of Wisconsin represented in Senate and Assembly enact as follows:

Wyoming—Be it enacted by the Legislature of the State of Wyoming.

Nevada—The people of the State of Nevada, represented in Senate and Assembly, do enact as follows.

Nebraska—Be it enacted by the Legislature of the State of Nebraska.

Montana—Be it enacted by the Legislative Assembly of the State of Montana.

Missouri—Be it enacted by the General Assembly of the State of Missouri as follows.

Massachusetts—Be it enacted by the Senate and House of Representatives in General Court assembled and by authority of the same.

Michigan—The people of the State of Michigan enact.

Minnesota—Be it enacted by the Legislature of the State of Minnesota.

Mississippi—Be it enacted by the Legislature of the State of Mississippi.

Maryland—Be it enacted by the General Assembly of Maryland.

Maine—Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

Louisiana—Be it enacted by the General Assembly of the State of Louisiana

**Kentucky**—Be it enacted by the General Assembly of the Commonwealth of Kentucky.

**Kansas**—Be it enacted by the General Assembly of the State of Iowa.

**Indiana**—Be it enacted by the General Assembly of the State of Indiana.

**Pennsylvania**—Be it enacted, etc.

**Oregon**—Be it enacted by the Legislative Assembly of the State of Oregon.

**Ohio**—Be it enacted by the General Assembly of the State of Ohio.

**North Carolina**—The General Assembly do enact.

**New York**—The people of the State of New York, represented in the Senate and Assembly, do enact as follows.

**New Jersey**—Be it enacted by the State and General Assembly of the State of

**Virginia**—Be it enacted by the General Assembly of Virginia.

**Washington**—Be it enacted by the Legislature of the State of Washington.

**Vermont**—It is hereby enacted by the General Assembly of the State of Vermont.

**Utah**—Be it enacted by the Legislature of the State of Utah.

**Tennessee**—Be it enacted by the General Assembly of the State of Tennessee.

**South Carolina**—Be it enacted by the General Assembly of the State of South Carolina.

**Texas**—Be it enacted by the Legislature of the State of Texas.

**Rhode Island**—It is enacted by the General Assembly as follows.

**West Virginia**—Be it enacted by the Legislature of West Virginia.

So the Convention will see at once that the States of Alabama, Arkansas and twenty-four others enumerated, use the words "General Assembly," and seventeen, including nearly all the later States admitted into the Union, use the word "Legislature." Then, again, I wish to call the attention of the delegates to the fact that all of our textbooks, those on Constitutional Law, for instance: "Cooley's Constitutional Limitations," Ordinaux's Constitutional Legisla-



tion," "Hare on American Constitution Law," "Smith on Constitutional Law," "Sedgwick on Statutory Construction," in fact all of our elementary text-books, largely every one of them use the term "Legislature." Now I have noticed it and in debating our proceedings, even the chairmen, men who have in their reports language "The General Assembly"—it is high-sounding, old-fashioned and old-time language, but they more frequently speak of the "Legislature" than they do of the "General Assembly." You go forth in the country, among the common people, and it is but one time in a thousand you will hear it called the General Assembly. They speak of it as the "Legislature." We want to use a term which is equally applicable, and which is briefer, half the length of the other, and a thing commonly used by our people. These reasons and none other actuated the committee in making this recommendation; and I move its adoption.

MR. HARRISON—I offer an amendment.

The clerk then read the amendment as follows:

"By amending Section 1 of the report of the Committee on Legislative Department: "Amend Section 1 by striking out the word "Legislature" where the same occurs therein, and inserting in lieu thereof the words "General Assembly."

MR. HARRISON—I have listened with some pleasure to the remarks of the distinguished chairman of the committee, which fail to satisfy me that the word Legislature was any better or more significant than the words General Assembly, which we have been using for the last decade or more in Alabama. In fact, I don't know but that it never has been "Legislature" in the Constitution. Perhaps, at an early period, it was called Senate and House of Representatives; but "General Assembly" has been used a long time. It is referred to in the other Articles in the Constitution as "General Assembly" and we are accustomed to it. It is true it is two words, but only a few more letters than the word "Legislature;" I can't see any good reason for the change, upon the theory that we were to make as few changes as necessary, and I don't think it wise to make this change and then perhaps have to change every article where the General Assembly is referred to in the Constitution in order to conform to it; but I simply offer this amendment now at its incipency to test the views of the Convention. Individually, I prefer the words General Assembly; but in order to test the Convention, I offer that amendment without consuming time to make any speech on it.

MR. BEDDOW—I move to lay the amendment of the gentleman from Lee on the table.

And upon a vote being taken, it resulted in 51 ayes and 38 noes; and the motion to table the amendment prevailed.

**THE PRESIDENT PRO TEM.**—The question is upon the adoption of Section 1 as reported by the committee.

And upon a vote being taken, the section was adopted.

**MR. HOWELL.**—I desire to submit a report from a special committee, which, I believe, under the rules, is a privileged question.

**THE PRESIDENT PRO TEM.**—The chair is not informed that it is a privileged question.

**MR. deGRAFFENREID.**—I have a minority report as to that.

**THE PRESIDENT PRO TEM.**—Is there objection to receiving the report of the special committee?

Objection was made.

**MR. HOWELL.**—I move that the rules be suspended and that the committee be allowed to report.

**THE PRESIDENT PRO TEM.**—The gentleman from Cleburne moves that the rules be suspended in order that the special committee may make their report.

And upon a vote being taken, on a division it resulted in 73 ayes and 16 noes, and the rules were suspended.

The clerk then read the report of the special committee as follows:

#### REPORT OF THE SPECIAL COMMITTEE.

Mr. President:

The Special Committee to whom was referred the matter of cutting down expenses by dispensing with some of the employes of the Convention, have carefully and impartially considered the same and a majority of whom desire to submit the following report and recommend the adoption of the same:

We recommend,

First—The dispensing with all clerks of committees after today except the clerks of the following standing Committees:

1. On Rules.
2. On Order, Harmony and Consistency of the Whole Constitution.
3. On Suffrage and Elections.
4. On the Journal.

And these clerks who are retained are expected to serve other Committees when necessary.

5. We recommend that the two messengers be dispensed with, as we have assurances that the postmaster of this city under the free delivery system, will deliver the mail here three times a day and carry off what mail matter is to be sent off.

6. We further recommend that five of the ten pages be disposed with and in order that each of these pages have an equal chance to be retained, we suggest and recommend the following plan, that the Secretary and Assitant Secretary in the presence of the President of this Convention, write the names of the ten pages upon slips of paper and place these slips in a hat and then let the Secretary draw out the slips and the first five names drawn out shall be those who are retained as pages.

7. We recommend that the clerical force in the office of the Secretary of this Convention be retained.

The aggregate reduction in expenses by the reduction of employees here recommended will be \$26 per day.

Very respectfully,

W. P. Howell,

J. E. Cobb,

B. B. Boone,

Committee.

The Clerk then read the minority report as follows:

#### THE COMMITTEE ON ECONOMICS.

##### Minority Report.

Your undersigned member of this committee regrets to say that he is unable to concur with the other members of the Committee in their recommendation that the pages selected by this Convention shall be reduced to five in number; and I recommend in lieu thereof, that the pages which have been selected to wait on the Convention shall be retained.

Since the organization of this Convention, many of the Committees have made their reports and the members of the Convention have ceased to offer ordinances for the consideration of the Convention.

For this reason, I am of the opinion that the Clerks recommended by the Committees to be discharged can be dispensed with, but the same conditions, so far as the service of the pages is

concerned, that existed when the Convention was organized, still exists.

Respectfully submitted,

Ed. deGraffenreid.

MR. WILLIAMS (Marengo)—I desire to offer an amendment to the minority report.

PRESIDENT PRO TEM—The question before the Convention is the substitution of the minority report.

MR. WILLIAMS—I have an amendment to the minority report.

MR. WHITE—I make the point of order that this matter is not now properly before the Convention.

MR. BEDDOW—On yesterday morning this same point of order was up, and while it was true for the first time since this Convention met this rule has been invoked, it was invoked on the report of the Committee on Printing, etc., which reported upon a resolution concerning union labor in this State. I rose for information and the Chair made this ruling—

PRESIDENT PRO TEM—The Chair has decided that point of order.

MR. BEDDOW—Does the Chair refuse to hear the ruling?

PRESIDENT PRO TEM—The Chair has decided that point of order.

MR. BEDDOW—Then I appeal to the house.

And upon a vote being taken the Chair was sustained.

MR. HOWELL—I would like for the House to allow me a few moments.

PRESIDENT PRO TEM—The gentleman from Marengo has the floor and has sent up an amendment.

The Clerk then read the amendment offered by Mr. Williams of Marengo as follows: "To amend the minority report by adding thereto 'and the messengers' after the word pages wherever it appears."

PRESIDENT PRO TEM—The gentleman from Marengo moves to amend the minority report by including messengers and the question before the Convention is on the adoption of the amendment to the minority report.

MR. HOWELL—I desire to say in behalf of the majority of that Committee, that it has been one of the most delicate and diffi-

cult duties we have had to perform since this Convention began, and if left to our feelings, respect and love for these dear boys, we would have brought in a different report; but that could not be our guide in this matter. We had no personal interest in a single employe who is affected by this report. We believe it is our duty to the citizens and taxpayers of Alabama, although in the aggregate the amount is small, but there is a principle in it that we would not ignore; and I do not believe any disinterested man on this floor will pretend to say but what we can with all safety and with all propriety dispense with these employes suggested in the report; and while it is a painful duty, yet those feelings and sympathies are not to govern us; and we insist that the report of the majority be adopted. Now I felt it due myself and to this committee to make this statement. I shall be content with whatever this Convention does. We have done our duty as we saw it; and there is no complicated question in it and leave it for the Convention to decide for themselves.

MR. WILLIAMS (Marengo)—I yield my time to the gentleman from Sumter.

MR. ROGERS (Sumter)—Mr. President and gentlemen of the Convention. At the assemblage of this Convention, whether wisely or unwisely, there were appointed for this body ten pages and two messengers I say wisely or unwisely is the question for gentlemen who have their sons upon this floor to decide. Speaking for myself and with all due respect to those gentlemen, I would never like for a child of mine to be launched out on the great sea of this world in politics in this way; but these young men are here and it is too small a question for this Convention to go into the peanut business and send these little boys home. If you could introduce a resolution here cutting down the membership of this body from 155 to 100, I would gladly vote for such a provision as that; but I would never vote to humiliate a child in this Convention. I have infinitely more respect for the little boy who has the possibility of the future of his life before him and who is aglow with hope than I have for the gray-headed man who has never accomplished anything in this world. Therefore, I move the adoption of the amendment offered by the gentleman from Marengo; and upon that I ask for the previous question.

MR. deGRAFFENREID—I would ask the gentleman to withdraw that.

MR. ROGERS (Sumter)—For what purpose does the gentleman ask me to withdraw the call for the previous question?

MR. deGRAFFENREID—I will state for the purpose of making a few remarks on the minority report and then I will call for the previous question afterwards upon the amendment to the minority report.

MR. ROGERS (Sumter)—For that purpose and no other I withdraw the call for the previous question.

MR. deGRAFFENREID—The appointment of this committee was precipitated, I presume, by a resolution introduced by me several days ago, which sought simply to reduce the number of clerks to committees. It was my opinion then and it is now that possibly a good many of the standing committees had already made their reports; and we could consistently get rid of the services of some of these committee clerks and save the State some small expense thereby. Some other gentleman introduced a resolution dispensing with the pages or a part of them. The same conditions that existed in this Convention when these pages were appointed still exist; and for that reason I have been opposed to cutting down their number. So far as the two messengers are concerned, if the Convention in their wisdom decides to retain them, it will all be satisfactory with me. I have nothing to say upon that matter.

MR. HARRISON—I would like to ask the gentleman if it was the intention of the committee to prevent the Committee on Corporations, which has not completed its labors, of the use of its clerk, until their report was made, which I think will be within the next two or three days, and I trust that we be allowed to retain our clerk until the report is made.

MR. deGRAFFENREID—So far as I am concerned, I think that will be entirely proper and right. If the Convention acts upon the matter of this minority report and these gentlemen desire to amend the report and except from the operation of it two or three days the clerk of the Committee on Corporations, I shall not object.

MR. HARRISON—Your motion for the previous question would cut off all debate. I wanted to amend——

MR. deGRAFFENREID—I move the adoption of the minority report and upon that I call for the previous question on the amendment offered by the gentleman from Marengo and the minority report.

(The President here resumed the chair.)

Upon a vote being taken the main question was ordered.

MR. HOWELL—I call for the ayes and noes to see how many men here are willing to waste the public money.

The call was not sustained.

MR. HOWELL—Doesn't the committee have a little time to reply after the previous question?

MR. WILLIAMS (Marengo)—The point of order is too late. He called for the ayes and noes himself.

THE PRESIDENT—The Chair will recognize the gentleman from Marengo as the mover, if he desires to discuss this question.

MR. WILLIAMS (Marengo)—No, sir; I do not care to speak.

THE PRESIDENT—The previous question was not ordered on the report of the committee.

MR. HOWELL—I called for the ayes and noes.

THE PRESIDENT—The call was submitted but not sustained.

THE PRESIDENT—The amendment of the gentleman from Marengo retains the messengers as well as the pages.

MR. COBB—I call for a division on that, separate vote on the pages and mesengers.

THE PRESIDENT—There is no occasion for a division. The question must be submitted in separate order because they are separate motions. The motion of the gentleman from Marengo favors the retention of the messengers, and the minority report as offered retains the pages. The question is on the amendment of the gentleman from Marengo.

Upon a vote being taken, the amendment offered by the gentleman from Marengo (Mr. Williams) was adopted.

MR. deGRAFFENREID—I don't want anything done that will cut off the gentleman from Lee.

THE PRESIDENT—The question is not debatable. The question is upon the adoption of the amendment offered by the minority committee, as amended, which retains the pages and the messengers.

Upon a vote being taken, the minority report was adopted.

MR. HARRISON—I dislike to ask anything that appears to be a special favor. But I desire to offer an amendment.

The clerk then read the amendment offered by Mr. Harrison of Lee, as follows: "To amend so as to allow the clerk to the Committee on Corporations to be retained by said committee during the present week, or until the report of said committee is made."

MR. HARRISON—In the advocacy of that amendment, I desire to state very briefly—

MR. HOWELL—I desire to say that the committee will accept that amendment.

MR. HARRISON—I wanted to state the reasons which I thought would be satisfactory to the Convention, but if the committee accepts it, that ends it.

MR. OATES—I desire to amend in this: "That the Committee on Legislative Department be allowed to retain its clerk until the consideration of this report be finished. I ask that for this reason only: The clerk is very efficient and can aid me a good deal. I don't know whether it will be adopted and there may be changes, and I will need his services. I hope to get through in a few days. I offer that as an amendment to the amendment to retain him until this report is finished.

MR. HOWELL—The gentleman from Montgomery will allow me to state that the Clerk of the Committee on Order and Harmony has been retained because that committee has not reported, and another committee or two have retained their clerks who will serve those committees, when needed.

MR. OATES—I will say, in reply to that, that they would be of no service to me in this matter, because Mr. Swanson, the present clerk, is perfectly familiar with all those things, has all the memoranda and everything of that kind, and can aid me greatly.

MR. HOWELL—I will accept that.

THE PRESIDENT—The chairman of the special committee indicates a willingness to accept the amendment. The question will be on the amendment offered by the gentleman from Montgomery; that the Committee on Legislative Department be permitted to retain its clerk until the consideration of the report is finished, and upon a vote being taken the amendment was adopted, and the question now is upon the amendment of the gentleman from Lee.

MR. COFER—I desire to make a motion in order to give these committees an opportunity to retain their clerks until they get through their reports. I make a motion to lay the section as reported by the committee upon the table.

Upon a vote being taken, the motion to table was lost.

A further vote being taken, the amendment of the delegate from Lee was adopted, and the report, as amended, was then adopted.

THE PRESIDENT—The special order now before the Convention is the consideration of the report of the Committee on Legislative Department.

MR. WHITE—I would ask if it would not be proper to adopt the amendment of the delegate from Montgomery.



**THE PRESIDENT**—It has been adopted. Both amendments were submitted and adopted.

Section 2 of the report of the Committee on Legislative Department was then read as follows:

Sec. 2. 'The style of the laws of this State shall be: "Be it enacted by the Legislature of Alabama," which shall not be repeated, but the Act shall be divided into sections for convenience, according to substance, and the sections designated merely by figures. Each law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest or revision of statutes; and no law shall be revived, amended, or the provisions extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length.

**MR. OATES**—The only change recommended by the committee is the change in the first part of the section, which is the same as was made in the first section, which has already been passed upon—"be it enacted by the Legislature of Alabama." The latter part of the change is in regard to Sections of Acts. You will find a good many Acts that have been passed repeat in every section "Be it further enacted," which is wholly unnecessary, and this provides that it is not necessary to repeat those words in the subsequent sections.

**MR. JONES (Montgomery)**—What is your opinion if the Legislature put it, "be it further enacted," in some of the subsequent sections? Would that invalidate the Act or that part of the Act?

**MR. OATES**—I don't think it would vitiate it at all.

**MR. JONES**—The courts have held if you leave out the word "Alabama," or anything that is mandatory, it vitiates the law.

**MR. OATES**—I do not think the repetition of "be it further enacted" would invalidate the law.

**MR. JONES**—Would the gentleman accept "need" instead of "shall?" Make it read "need not" instead of "shall not?"

**MR. OATES**—I do not think it is necessary, but if it is insisted on, I do not care.

The amendment of the delegate from Montgomery was read as follows: "Amend Section 2 by striking out the word 'shall' where it first appears, and insert the word 'need' in place thereof, in line 2."

A vote being taken, the amendment was adopted.

MR. O'NEAL (Lauderdale)—I have an amendment.

The amendment was read as follows :

Amend Section 2 by striking out the word "legislature in the second line and adding in lieu thereof, the words 'General Assembly.'"

MR. OATES—That question has been considered in the first section and the vote there was adverse to the gentleman's proposition I therefore move to lay the amendment on the table.

A vote being taken the amendment was tabled, and a further vote being taken the section as amended was adopted.

Section 3 was then read as follows :

"Sec. 3. Senators and Representatives shall be elected by the qualified electors on the first Monday in August, nineteen hundred and two, and every four years thereafter, unless the legislature shall change the time of holding elections. The terms of office of the Senators and Representatives shall be four years, commencing on the day after the general election, except as otherwise provided in this Constitution. Whenever a vacancy shall occur in either House the Governor shall issue a writ of election to fill such vacancy for the remainder of the term."

MR. OATES—This section, as recommended here, retaining the first Monday in August as the day for electing these officers, did not meet the approval of the Chairman of the Committee, who favored the Tuesday after the first Monday in November. I will state to the Convention that the delegate from Mobile (Mr. Brooks) and the delegate from Sumter (Mr. Chapman) were the members of the Committee who most strongly advocated this in this form. I, therefore, propose to yield the floor to the delegate from Mobile (Mr. Brooks.)

MR. JONES (Montgomery)—Would it be in order to offer an amendment?

MR. BROOKS—If the gentleman will yield to me for a moment.

MR. JONES—I will yield.

MR. BROOKS—I do not rise for the purpose of discussing the point referred to by the Chairman of the Committee, although, before I get through, I hope to have something to say on that subject.

The Section reported by the Committee proposes a change in the present Constitution, which, as I conceive it, is not only a serious but an injudicious change. It proposes that hereafter the representatives shall be elected every four years instead of every

two years; and a subsequent section requires that the legislative sessions shall be had every four years, instead of every two years. Now, it is impossible to discuss one of these points without at the same time discussing, to a certain extent, the other, they are so intimately connected. In the discussion of these two points connectedly three phases of the question have been presented. The first point of view is favorable to that which now obtains under our present Constitution, namely, biennial elections and bi-ennial sessions. The third is favorable to the proposition in this section to quadriennial elections and quadriennial sessions. Now I cannot get my consent to the change proposed. I prefer to have biennial elections and bi-ennial sessions. If I cannot get that, I would prefer to have quadrennial elections and bi-ennial sessions.

I have heard no good reason assigned for this change. Gentlemen refer to the action of this Convention in eliminating from the legislative action hereafter so much in regard to local laws—

MR. OATES—Will the gentleman allow me. I did not state that there are two questions involved in this section. One is that the August election shall be retained and the other is whether the elections shall be quadrennial or biennial as heretofore. The first question, as to whether you will have elections in August or November, is the question I presented but both are involved in it.

MR. BROOKS—Probably the gentleman from Montgomery did not hear my opening remarks when I stated that I would not confine myself to the particular issue he raised, but would discuss the proposition contained in the section and in discussing that it was hard to separate the question of quadrennial elections and sessions.

MR. JONES (Montgomery)—Will the gentleman allow me to offer an amendment which is in line with his remarks and then he can discuss it.

MR. BROOKS—I would prefer the gentleman to wait until I get through.

MR. JONES—I yielded the floor to you.

MR. BROOKS—I say that contention falls to the ground when we recollect that over one-half of the States have in their constitutions the section we have been squabbling over for the last few days on local legislation. The provisions in that regard that we have adopted are not new with us but are contained in a majority of the Constitutions of the States of the Union, and not one of those States has seen fit under the operation of that constitutional enactment to change the terms of office of their representatives or the time when their legislature shall meet, simply because it is not necessary.

Gentlemen have held up as an object lesson on more occasions than one the volume of the local and special laws of the legislature to show what the legislature has done in that regard and then they argue that having eliminated the power of the General Assembly over so many questions of local legislation, that in the future that thing will not be possible. Then they have held up the very thin volume of the general laws passed, but they do not show the number of general laws that were not acted upon and were not reached because of the pressure upon the time of the legislature by reason of local legislation, and they do not show us how many laws are on the statute books that may have to be repealed because the legislature did not have time to give the necessary deliberation and attention to them. So I say that we have not done anything in removing from the legislature the power to pass this local legislation that shows that we will not need a General Assembly every two years as much as we do now for the purpose of general legislation.

THE PRESIDENT—The time of the gentleman has expired.

MR. BROOKS—I make the point of order that I am not discussing any amendment but a provision in the report. I am entitled to speak thirty minutes.

MR. OATES—I agreed with the gentleman from Lee (Mr. Harrison) that he would offer an amendment.

MR. JONES—I object. I had the floor to offer an amendment and yielded and have not yet had a chance to offer my amendment.

THE PRESIDENT—It seems to the Chair that the gentleman from Mobile is correct. He is opposing the adoption of the section.

MR. BROOKS—I do not want to inflict myself on the Convention, but I do want to be heard attentively if I can be for I have fixed convictions in regard to this section.

Now so much for the question of substituting quadrennial sessions for biennial sessions on the ground that there is no need for our representatives to come together every four years. I am opposed to it.

MR. FOSTER—Will the gentleman permit we to ask him a question in the way of a suggestion?

MR. BROOKS—Yes, sir.

MR. FOSTER—Does the gentleman know of a civilized State in the world that has quadrennial sessions?

MR. BROOKS—I am glad the gentleman called my attention to that, because I want to state all of the forty-five States in the

Union have biennial elections and biennial sessions with the exception of seven of the States which have annual elections, namely, Maine, Massachusetts, Connecticut, Rhode Island, New Jersey, New York and Pennsylvania, and the single exception of Mississippi, which as has quadrennial elections and quadrennial sessions and those quadrennial sessions are divided into two, one for general laws and the other to deal with local legislation alternating every two years. That seems to be the experience of all the States and a majority of them having the same constitutional provisions that we have adopted in regard to local legislation. They are all having biennial elections and sessions with the exception of the seven which have annual elections and sessions and with the exception of Mississippi, which as has been suggested, is a purely agricultural community.

I remember a good many years ago that brilliant Virginia statesman, Henry A. Wise, made an eloquent address to the people in behalf of the claims of the Old Dominion for the services of its ablest and best men in State affairs. He contended that their best men were attracted more by the honors of Federal elections and Federal preferment than by those of the State. He argued that the State was the repository of those great governmental powers and agencies with which the people were most brought into contact, and that their liberty and happiness and protection depended more upon the just administration of State affairs than Federal matters. If that was true then, it is equally true now, when there is a tendency to centralization of Federal power, when that power constantly impinged upon the rights of local self government and when the dominating influence of Federal affairs are more and more apparent. But while the State offers to her best men the highest field for the inculcation of statesmenlike views and for the exercise of the highest qualities of political genius, it is true also that the interests of the State demand that the people should from time to time have an opportunity frequently to assert themselves in the election of their representatives and to have a corresponding opportunity through representation coming fresh from the people, to revise, review and modify, if need be, in the legislative halls, their governmental powers and agencies in so far as needs and requirements made it necessary.

Now we have enlarged the powers of the Executive and we propose to give the Executive some quasi legal power in the matter of revenue bills, but I submit that the interval of four years is too long and that we ought to retain the constitutional provision which we now have for biennial elections and biennial sessions. The best safeguard against the corroding influence of stagnation among the people is to let them have a free movement in all that pertains to their interest, in coming together from time to time and electing their representatives and getting the benefit of the

educational influence of free institutions upon the hustings in speeches and discussions and then have an opportunity of going to their Legislature once in two years and having their needs and requirements looked into the subserve. Not only that, but we live in an age of rapid thought and progress and quick in great development, going sometimes by leaps and bounds. And who knows what may occur within two years, much less four years when it may be necessary for the law-making body of the people to assemble together to modify existing laws or enact new ones which have a bearing upon the peculiar or particular circumstances that may then exist?

Now, Mr. President, this section in my opinion needs to be amended in two or three particulars. I do not care about amending it as to the time of holding elections and on that point I am in line with the provisions as reported by the chairman of the committee and believe our State election should be held in August. I do not believe they ever should be and certainly hope in my life time they never will be on the same day that Federal elections are held, for the simple reason that although the Federal laws which have heretofore interfered with our elections may have been repealed and although it may not be the purpose of Congress to ever enact such laws again, still the moral effect of having State elections is bad, and I tell you the Federal power will exert its dominating influence on that day if possible whichever party is in power and our interests and general welfare depend upon the holding of these two elections on entirely separate and distinct days.

MR. JONES—I have an amendment to offer.

MR. BROOKS—I have not yielded yet, but I am going to retire in a short time and will give the gentleman an opportunity to offer his amendment then. But I want to say that I have intended no discourtesy in insisting on my right to hold the floor.

Now I am going to read as the concluding part of my remarks an amendment which I propose and will then yield to the gentleman to offer his amendment. My amendment is as follows:

Amend Section 3 of the report of the Committee on Legislative Department by striking out all after the section number and insert the following: Senators and Representatives shall be elected by the qualified electors on the first Monday in August, 1902, and every two years thereafter unless the Legislature shall change the time of holding elections. The terms of office of the Senators shall be four years, commencing on the day after the general election, except as otherwise provided in this Constitution. Whenever a vacancy shall occur in either house, the Governor shall issue a writ of election to fill such vacancy for the remainder of the term.

MR. OATES—Before the amendments are considered, I ask unanimous consent to make a correction of punctuation. In the

third line, after the word "elections," there should be a full stop, and the next word would begin with a capital. It is simply an error of the printer.

THE PRESIDENT—The secretary does not use the printed report, but has the original, and the error does not occur in that.

MR. JONES—I offer an amendment.

THE PRESIDENT—The chair would suggest to the gentleman that there is an amendment pending and his amendment would have to relate to that amendment or the gentleman can withhold it until the Convention passes on this amendment.

MR. JONES—Well, I will do that.

MR. deGRAFFENREID—I move to lay the amendment of the gentleman from Mobile on the table.

A vote being taken, the amendment of the delegate from Mobile was tabled.

MR. JONES—I now offer my amendment.

The amendment was read as follows:

"Amend Section 2 by striking out all after the words '1902' and insert in lieu thereof the following words: 'Representatives shall be elected every two years thereafter and Senators every four years thereafter, so that the term of Representatives shall be two years and that of Senators shall be four years, commencing on the day after the general election at which they were elected, except as otherwise provided in this Constitution. Whenever a vacancy shall occur in either house, the Governor shall issue a writ of election to fill such vacancy for the remainder of the term.'"

MR. JONES—I offer this specific amendment because I do not desire to trespass upon the patience of the House longer than—

THE PRESIDENT — Will the gentleman explain wherein his amendment differs from the amendment of the gentleman from Mobile?

MR. JONES—Yes, if you do not take it out of my time. In my amendment the Senators are elected in 1902 and hold for four years, and the Representatives elected hold for two years.

THE PRESIDENT—What was the amendment of the gentleman from Mobile, which was laid on the table?

MR. JONES—It makes no difference; you can offer a proposition that has been laid on the table.

THE PRESIDENT—It seems to the chair the amendment is practically identical with the amendment of the delegate from Mobile, and if it is, the gentleman would not be in order.

MR. JONES (Montgomery)—Then I have the floor and you can put my amendment on the floor or anywhere else, and I will speak on the main question. There cannot be any point of order on that.

I am opposed to this section in toto. This is one of the most important matters that has come before this Convention. It is a thing that has been discussed and mooted by scholars, jurists and publicists and plain common-sense people from time to time, so that it is hardly possible to adduce anything new on the subject.

After the Revolution, as everybody knows who has studied history, some of the States, like Virginia, held on to the old English system and elected their Representatives for seven years. Other States elected them every six months, and some of them every year. Then when the Constitution of the United States was under discussion, some things were said which are familiar to us all, but perhaps I may be pardoned for recalling them. Fischer Ames said, "Tyranny begins where annual elections end." Readers of history are also familiar with the fact that such a thing, even in England centuries back, as having the legislative power, put to sleep for four years, excited the indignation of the House of Commons and in the time of Charles II they enacted a statute that Parliament must meet at least every three years. I believe there is no State in this Union, unless it is the State of Mississippi, where they allow the legislative power to go to sleep for four years, so that it cannot be put in motion during that time unless the Governor calls it together on some extraordinary occasion.

The Executive going into power is generally given a longer tenure of office, but on the formation of the Constitution of the United States, and of nearly every Constitution the people have framed, they have insisted on having the legislative power in session at least every two years.

Now who are the Legislature? They are the masters, and the master ought to visit his premises at least once every two years. Now, human nature is pretty much the same, and officers are pretty much the same, but we know by universal experience that the Executive generally regards the Legislature as somewhat of a nuisance. He is glad to get rid of them. Now, we have officers in office for four years. They might do something requiring impeachment, and it is not to be expected the Governor would call the Legislature together to impeach himself; and this people, if they put such a thing as that in the Constitution, may be the victims of outrageous wrong by the Executive, false policies enforcing law, and have no redress on earth.

Here comes up great questions, Federal questions it may be. You have a couple of Senators to elect and your Executive may not be in harmony with the prevailing thought of the people, and



yet for four years the Executive will put Senators in there directly opposed to the will of the people, or whom the people do not want. I submit that is not wise.

Now, it is said that the people are tired of frequent elections. So they are: but there ought to be a happy mean. The elections for the Legislature do not tear people up like the elections for the higher executive officers, what are known in common parlance as the "paying offices." Then, another thing, take an illustration from Aldermen. An Alderman goes in for four years and the first two years he is absolutely arrogant. He does not care for public opinion. But in the last two years, trying to make up for that, he absolutely debases himself in the other direction trying to meet the approbation of the people. We want to give our young men a chance. They are the hope of the country. They ought to have a chance to legislate, and the people ought to have a chance to send them here to educate them in the great business of government.

There is an additional reason. Under this section all of the Senators go out at the same time, at the end of four years, and there is a brand new Senate and House. It has been the policy of framers of Constitutions in Alabama for half a century back to allow one-half of the Senators to go out every two years, so that in every legislature there are some men who are familiar with the business.

MR. MACDONALD—Do I understand the gentleman to suggest that we had better have legislatures every two years for the purpose of sending the young men to them?

MR. JONES—I said we had better give them opportunity to be trained in the great business of government.

MR. MACDONALD—Then you think the legislature should be a kind of political kindergarten?

MR. JONES—To some extent, yes. Because when people do not exercise themselves with their government, they soon have inefficient officers.

I was proceeding to say that this section precipitates on the State every four years a fresh set of legislators, instead of retaining one-half of the Senators who are presumed to be familiar with legislation. They all go out and I do not see any reason for this change. I have not heard anything adduced in favor of this change except that the people are tired of elections. But the only way to retain our liberties is sometimes to get tired in efforts to retain them.

MR. MACDONALD—Is not there an additional reason that we should have the cost of an election and the cost of a session of the legislature every two years?

MR. JONES—I understand that is one of the reasons advocated and the main reason; and we are putting up against the cost of a legislature, twenty-five or fifty thousand dollars, all of the evils that may happen to the people when they cannot have their legislative department in session once every two years. Why, Mr. President, we have been so constrained in our legislation, the legislature being absorbed in local matters, electing solicitors and Senators, that apparently the people have not been able through their representatives to give attention to grave economic problems and matters of reform that concern the State and which are not in their nature political.

THE PRESIDENT—The time of the gentleman has expired. The gentleman is discussing his amendment.

MR. JONES—No, sir. I am not discussing my amendment. The Chair said my amendment was not in order.

THE PRESIDENT—To what point is the gentleman speaking?

MR. JONES—Generally, against the ordinance. I think if the Chair had listened there could have been no doubt in his mind as to what I was driving at.

THE PRESIDENT—The Chair understood the gentleman was advocating his amendment.

MR. JONES—I beg pardon, but it was not my fault that the Chair so misunderstood. What is the ruling of the Chair?

THE PRESIDENT—There was an amendment pending and the gentleman from Montgomery offered his amendment.

MR. JONES—But I understood the Chair ruled that amendment out of order.

THE PRESIDENT—The Chair has not ruled but the Chair is prepared to rule on that question now.

MR. JONES—If the Chair will pardon me, when the Chair ruled my amendment out of order I remarked that the amendment could be put on the floor or anywhere else, I did not care about it and that I would speak generally on the section.

THE PRESIDENT—The gentleman made that statement and without pausing to await the ruling of the Chair the gentleman proceeded to a discussion of the amendment. When an amendment is offered and is read before the Convention, it is before the Convention for consideration until it is withdrawn by consent of the House or until it is ruled out of order by the Chair and the Chair as a basis for ruling upon the question asked the gentleman to explain the difference between his amendment and the amend-

ment offered by the gentleman from Mobile. Without making an explanation the gentleman proceeded to a discussion of the question and has consumed ten minutes in the discussion of the amendment, because the amendment was before the Convention and if he was not discussing the amendment, he was not in order.

MR. JONES—Then how was the gentleman from Mobile in order?

THE PRESIDENT—At the time the gentleman from Mobile was discussing the question, there was no amendment pending.

MR. JONES—I submit that I had a right. The Chair indicated that my amendment was not in order and I proceeded then to discuss the main question, saying that the amendment could be put on the floor if the Chair wished, that I did not care for it. I did have the understanding from what the Chair said that my amendment was not in order, but was out of order and was discussing the section generally, and so stated to the Chair.

THE PRESIDENT—The gentleman from Montgomery stated that his amendment might be put on the floor, but it was not put on the floor, but is on the desk of the Secretary and is now before the Convention until the Chair rules otherwise and it was upon that amendment that the gentleman was addressing the Convention, if he was in order at all.

MR. JONES—I beg pardon. I thought and said that I would speak upon the main proposition and I started out by saying that I was opposed to it in toto. Upon that there can be no mistake, as the stenographer has it down. I would like to know what the Chair does rules, if I am in error.

THE PRESIDENT — The Chair has not ruled upon the amendment at all, but in the opinion of the Chair the amendment is not in order as it substantially sets forth the same provisions that were embodied in the amendment offered by the gentleman from Mobile, and the amendment of the gentleman from Montgomery would not be in order without taking from the table the amendment offered by the gentleman from Mobile.

MR. JONES—Then am I not in order to discuss the general subject and was I not entitled to thirty minutes on that?

THE PRESIDENT—The gentleman may discuss the general question.

MR. OATES—I would like to explain as some of the gentlemen do not seem to understand this as well as my friend, the gentleman from Montgomery. I stated when this section was read that I had made the report but I was not in accord with it and that the delegate from Mobile in the Committee was the leading man advocating it in its present shape in regard to holding elections in

August; and, therefore, I yielded the floor to him and he spoke generally in the first place.

MR. JONES—I understood that perfectly well, but I understood that the rule of the Convention was that members had thirty minutes when speaking on the general subject.

MR. O'NEAL—I call for the reading of both the amendment offered by the delegate from Mobile and that offered by the delegate from Montgomery, so that we may see what they are. I think there is some difference.

MR. HARRISON—I have an amendment.

The amendment was read as follows:

Amend Section 3 by striking out the words "first Monday in August" where they occur therein, and insert in lieu thereof the following: "The Tuesday after the first Monday in November."

MR. O'NEAL — I rise to a point of order. The amendment offered by the delegate from Mobile (Mr. Brooks) was never read by the Clerk. It was read by Mr. Brooks in the course of his remarks but was never sent to the clerk's desk and never read by the Clerk.

THE PRESIDENT—The amendment was read and was discussed by the delegate from Mobile for over thirty minutes and the Chair regrets that the gentleman from Lauderdale did not hear the reading and the discussion despite the efforts of the Chair to maintain order.

MR. HARRISON—The object of the amendment is to change the time of holding elections from August to November to correspond with the general election. This was formerly the custom in Alabama until changed by the Constitutional Convention of 1875, when on account of hostile legislation threatened on the part of Congress, the Constitutional Convention which then met changed the time of holding the elections to August. The reasons were good then. They have been intimated by the delegate from Mobile, but I submit that we have reached the time in Alabama when we need apprehend no fear of Federal intervention in our elections. I am satisfied that the change will be in the interest of economy as well as meet the general view of the people not to have so many elections. I do not think it is wise when we are going to have an election in November to have an election in August. We should save not only the expense of the election but avoid stirring up the people in August and in November of the same year. I don't care which sentiment prevails so far as the proposition of the Committee as reported is concerned, I am in favor of it with this amendment, but should they succeed in changing the Section and having biennial elections, still this amendment should be adopted. I think

the interests of the people will be subverted in the two aspects that I have referred to, economy, useless expenditure of time and money and stirring up the people. This can apply to the Section as it now stands and if the Convention in its wisdom should see proper to have biennial elections and sessions, this will still apply.

MR. SOLLIE—Will the gentleman answer a question? Does your amendment make it mandatory that the election shall be in November, or does it leave it optional with the Legislature?

MR. HARRISON—It leaves it as reported by the Committee unless it shall be changed by the Legislature.

MR. SOLLIE—It leaves it optional?

MR. HARRISON — It only fixes it until the Legislature changes it.

MR. CHAPMAN—I shall detain the Convention but a few moments, in support of the report of this Committee as to this Section. It seems to me that August is the proper time for an election, to subserve the best interests of the people of the State. That is at a period of the year when the farmers have less to do. They are through with their work of making a crop and have not begun the work of gathering it. It is at a time, Mr. President, when we can attend to elections, and to a canvass, better than at any other period of the year. We have gotten used to it in such a way that we all know that in August and during the summer, comes a period of canvassing, of elections, of barbecues, dinners and camp meetings, and such things as that, and they go pretty much hand in hand. If we change the time to November it comes at a time when our farmers are all busy. They are more especially busy then than at any other time during the fall. They are busy gathering corn and cotton, and—

MR. SANFORD (Montgomery)—And sowing wheat.

MR. CHAPMAN—Sowing wheat, as suggested by my learned friend from Montgomery, and I submit they have less time the second Monday in November than they have at any time during the summer months.

Again, Mr. President and gentlemen of the Convention, I am absolutely and utterly opposed to having the Federal elections and State elections come on at the same time. No matter if there is no fear of interference from the Federal authorities. I concede that there is none now, and probably will not be in the future, but there is a certain influence, whether it comes direct from Federal authority, or in an indirect way through Federal money, why it comes and the State elections are more or less influenced by Federal interference in that way. Another objection to it is, my observation has been that the more elections you bunch together,

the greater opportunity for fraud, and the greater the fraud committed. There is more opportunity for trading and trafficking. There is more opportunity for combinations among candidates, which will ultimately destroy the will of the people in the election. For these reasons, Mr. President and delegates of the Convention, I think that this Section as reported by the Committee should be adopted by the Convention. If in the future it should be found advisable to change the election from August to November, the authority is conferred upon the Legislature to do it, but until that necessity appears, from my experience under the present Constitution, I am decidedly in favor of keeping the elections separate.

MR. SOLLIE—Do you think it wise to disassociate the idea of good watermelons in our summer elections?

MR. CHAPMAN—Not a bit of it. We ought to have good watermelons and good peaches, and good everything else, at the time of our summer elections, and occasionally we may get a little importation from the northern part of the State, from the “eyeless tiger.” I do not know how that may be, but sometimes it is enjoyed. I have heard of people who enjoy the elections in the summer time. (Laughter.)

As I have just said, if it is found better to change the election to November, we can do so.

Insofar as holding the session quadrennially, instead of biennially, I am decidedly in favor of that. I do not believe that we ought to have a meeting of the Legislature every two years as heretofore, and we have but to point to the action of the various Legislatures in the accumulation of bills, and the passage of bills, to convince any on that it is necessary to lengthen the time, and shorten the session, in order to stop, as we might say, this infuriated folly of the Legislature in passing so many bills. If we both lengthen the time between the sessions of the Legislature and at the same time shorten the sessions, or limit the time, which another section of this article does, within which local bills may be passed, we will have some remedy against the flood of bills that has heretofore deluged the Legislature of this State.

MR. SPRAGINS—I move to lay the amendment by the gentleman from Lee upon the table.

THE PRESIDENT—The gentleman from Sumter has the floor.

MR. CHAPMAN—For the purpose of seconding your motion, and having the motion before the Convention, I yield the floor to the gentleman—

THE PRESIDENT—The time of the gentleman has expired. The gentleman from Montgomery.

MR. OATES—The amendment offered by the delegate from Lee, changing the election from August to November fully meets my approval. Delegates will remember that prior to the Convention of 1875 was a period when there were Federal bayonets in Alabama and during the period of reconstruction.

MR. CARNATHON—Do I understand you accept the amendment of the gentleman from Lee.

MR. OATES—I have no right to speak for the committee in accepting it; it is acceptable to me personally, and I know it is to several members of the committee, but a majority of the committee voted as it is reported here, and the report is as the majority voted, though it was a close vote.

Now, sir, I want to give a few reasons briefly why I am in favor of the amendment offered by the delegate from Lee. Prior to 1875 we had all of the troubles of reconstruction and bayonets, when Federal troops were here, but the troops had been withdrawn at that time, and there was a difference among the members of that Convention as to whether the State elections should be changed from November to August. Gentlemen know they all come off in November together prior to that. However, there was one good reason for the change, and it was because at that time there still remained upon the statute books several Federal enactments which authorized the appointment of inspectors and watchers you may call them, and Federal officials to interfere in an election. In order that we might get away from them, and hold our own State elections without interference from them, was the reason that it was changed to August. But every one knows it is against economy. It is disadvantageous to the people to have two elections in one year but a few months apart. It creates during the whole of that year a furor—

MR. SAMFORD—What is the disadvantage?

MR. OATES—I am telling you. If you will wait I will do it. I am not going to dodge it. Men are excited more or less, and are taking interest in the elections, friends are candidates, first in the August election and then in the November election, and it is one continual round of electioneering and excitement during the whole year, when it is wholly unnecessary. You do not need to separate them. You do not need an August election on account of Federal interference. Why? Because during Mr. Cleveland's second term, when both Houses of Congress were Democratic, the question was extensively debated and every Federal Statute on that subject was wiped from the statute books. There is not one in existence now, by which the Federal government can interfere in any State election. It belongs entirely to the State.

MR. WILLIAMS (Barbour)—In the State of New York they hold both the State and Federal elections upon the same day? That is a fact?

MR. OATES—Yes.

MR. WILLIAMS (Barbour)—It is the vote of the city of New York that carries the State Democratic. And is it not a fact that in a national election in the city of New York many voters trade off a President for some petty State officer? Has not that been done?

MR. OATES—I suppose it has, and have you ever known any election where there was not a swapping and trading in that way?

MR. WILLIAMS (Barbour)—No, I do not, but if the State election in New York was on a different day, there would be no opportunity for it.

MR. OATES—That is for the people of New York to determine. I am talking about the people of Alabama. Here there is not so much danger from trading. It saves much expense and excitement, and trouble, and there is no reason why we cannot hold our elections the same day as the Federal elections are held, and it will not be then as it is now, where one of the things which puts the members of Congress from this State at a disadvantage is that they do not receive so many votes, and not one-fourth of the voters are polled in the districts in the November election as are polled in the August election. The delegates from Lee and from Macon know that from their experience in Congress. They have seen that from their own experience. Men get tired of going out on so many election days, and there is no good reason at this time why they should not all go out to the election on Tuesday after the first Monday in November. There is no reason on earth why we should have so much excitement, and so much expense, and then besides some other important committees have been shaping their work in view of that very thing. The committee of which I had the honor to be chairman was divided upon it, the majority favoring August, but a large minority favoring November. I think it is unnecessary to consume any further time, as the Convention certainly understands the question, and I move the previous question on the amendment offered by the gentleman from Lee.

MR. HEFLIN (Chambers)—I would ask the gentleman to withdraw that in order that some of the members of the committee may be heard that opposed the measure.

MR. OATES—I do not know how many of them want to be heard. I will ask the delegate from Chambers if he wishes to be heard. I have no objection to withdrawing the motion.



MR. HEFLIN (Chambers)—I would like to be heard as to how the majority of the committee stood on the report.

MR. OATES—If I withdraw, will you renew the motion, before you take your seat?

MR. HEFLIN (Chambers)—My purpose was before I sat down to move to table the amendment.

MR. OATES—I decline to yield for any such purpose and I call for the previous question.

MR. REESE—I move to table the amendment of the gentleman from Lee.

THE PRESIDENT — The gentleman from Montgomery moves the previous question upon the amendment by the gentleman from Lee, and thereupon the gentleman from Dallas moves to lay upon the table the amendment offered by the gentleman from Lee. The question will be upon the motion to table the amendment.

Upon a vote being taken, a division was called for and, by a vote of 43 ayes and 63 noes, the motion to table was lost.

MR. HEFLIN (Chambers)—I voted no for the purpose of taking the amendment up for consideration again.

THE PRESIDENT—It is not necessary for the gentleman to state how he voted in order to move to take from the table. Any member may move to take from the table.

MR. HEFLIN (Chambers)—I do not believe you can move to reconsider a vote to table, can you?

THE PRESIDENT — You cannot, but any gentleman may enter a motion to take from the table, whether he voted for or against the proposition.

The question recurring upon the motion of the gentleman from Montgomery, the main question was ordered, and upon a further vote being taken, the amendment was adopted.

MR. BROWNE — In order that the gentleman from Montgomery (Mr. Jones) may have considered the amendment that he offered to introduce, and which was ruled out of order on account of the fact that it was similar to the amendment offered by the gentleman from Mobile, I now move to take from the table the amendment offered by the gentleman from Mobile.

THE PRESIDENT—It is moved that the amendment offered by the gentleman from Mobile which was laid upon the table, be taken from the table.

MR. BULGER—Before that vote is taken, I would like to hear the amendment read.

The amendment was read as follows: "Amending Section 3 of the report of the Committee on Legislative Department, Strike out all after the section number, and insert the following: Senators and Representatives shall be elected by the qualified electors on the first Monday in August, 1902, and every two years thereafter, unless the Legislature shall change the time of holding elections. The terms of the office of Senators shall be four years, commencing on the day after the general election, except as otherwise provided in this Constitution. Whenever a vacancy shall occur in either house, the Governor shall issue a writ of election to fill such vacancy for the remainder of the term.

MR. BULGER—I move to lay the motion of the gentleman from Talladega on the table.

THE PRESIDENT—The motion is not in order, in the opinion of the chair.

MR. O'NEAL—I call for the ayes and noes on the motion of the gentleman from Talladega.

The call was sustained.

MR. REESE—I rise for the purpose of making a motion to indefinitely postpone the motion of the gentleman from Talladega.

THE PRESIDENT—In the opinion of the chair, the motion is out of order. The question is upon the motion of the gentleman from Talladega to take from the table the amendment offered by the gentleman from Mobile. The ayes and noes have been called for and the call sustained. As many as favor taking from the table the amendment offered by the gentleman from Mobile will say aye, and those opposed no, as your names are called.

Upon the call of the roll, the vote resulted as follows:

#### AYES

Brooks,	Jones, of Montgomery,	Sollie,
Browne,	Lomax,	Spears,
Byars,	Martin,	Taylor,
Foster,	Moody,	Thompson,
Grayson,	O'Neal (Lauderdale),	Watts,
Greer, of Perry,	Rogers (Lowndes),	White,
Heflin, of Chambers,	Sanford,	Williams (Barbour),
Heflin, of Randolph,	Selheimer,	

TOTAL—23.

#### NOES

Messrs. President,	Barefield,	Beddow,
Banks,	Bartlett,	Bethune,

Blackwell,	Hood,	Pettus,
Boone,	Howell,	Phillips,
Bulger,	Howze,	Pillans,
Burns,	Inge,	Pitts,
Cardon,	Jones, of Bibb,	Porter,
Carnathon,	Jones, of Hale,	Reese,
Case,	Kirk,	Reynolds (Chilton),
Chapman,	Kirkland,	Reynolds, of Henry,
Cobb,	Knight,	Robinson,
Cofer,	Ledbetter,	Rogers (Sumter),
Coleman, of Greene,	Leigh,	Samford,
Davis, of DeKalb,	Locklin,	Searcy,
Davis, of Etowah,	Lowe, of Jefferson,	Sentell,
Dent,	Macdonald,	Sloan,
deGraffenreid,	McMillan, of Baldwin,	Smith (Mobile),
Duke,	Malone,	Smith, Morgan M.
Eley,	Maxwell,	Sorrell,
Eyster,	Merrill,	Spragins,
Ferguson,	Miller (Marengo),	Stewart,
Fletcher,	Miller (Wilcox),	Stoddard,
Foshee,	Murphree,	Vaughan,
Freeman,	NeSmith,	Waddell,
Gilmore,	Norman,	Walker,
Glover,	Norwood,	Weakley,
Graham, of Montgomery,	Oates,	Whiteside,
Greer, of Calhoun,	Opp,	Willet,
Halcy,	O'Rear,	Williams (Marengo),
Handley,	Palmer,	Wilson (Washington),
Harrison,	Parker (Elmore),	Winn,
Hodges,	Pearce,	

TOTAL—96.

#### ABSENT OR NOT VOTING

Almon,	Grant,	Morrisette,
Altman,	Henderson,	Mulkey,
Ashcraft,	Hinson,	O'Neill, of Jefferson,
Beavers,	Jackson,	Parker (Cullman),
Burnett,	Jenkins,	Proctor,
Carmichael, of Colbert,	Jones, of Wilcox,	Renfro,
Carmichael, of Walker,	King,	Sanders,
Cornwall,	Kyle,	Smith, Mac. A.,
Craig,	Long, of Butler,	Weatherly,
Cunningham,	Long, of Walker,	Williams (Elmore),
Fitts,	Lowe, of Lawrence,	Wilson (Clarke),
Graham, of Talladega,	McMillan (Wilcox),	

By a vote of 96 noes and 23 ayes, the motion to take the amendment from the table was lost.

MR. OATES—I move the previous question on the adoption of the section as amended.

MR. WATTS—I hope the gentleman will allow me a moment—

There were expressions of dissent, and upon a vote being taken, the main question was ordered, and upon a further vote the section as amended was adopted.

MR. ROGERS (Sumter)—It is now very near 1 o'clock, and I move that we adjourn before taking up the next section.

MR. REESE—I desire to give notice that I voted in the affirmative, and I make a motion to reconsider the vote on this section.

Leaves of absence were granted to Mr. Parker (Cullman) for today; Mr. Sollie for this afternoon, Thursday and Friday, and Mr. Kirkland for this afternoon, and the Convention adjourned.

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#### AFTERNOON SESSION

The Convention met pursuant to adjournment, there being 125 delegates present upon the call of the roll.

Leave of absence was granted to Mr. Long of Butler for tomorrow.

MR. LOMAX — Mr. President, I move that the Article on Preamble and Declaration of Rights be now read a third time and put upon its passage.

There being no objection, the article was read by the Clerk as follows:

An ordinance adopting a Preamble and Declaration of Rights for the Constitution for the State of Alabama.

Be it ordained by the people of the State of Alabama in Convention assembled, that the following shall be the Preamble and Declaration of Rights of the Constitution of this State:

#### PREAMBLE

We, the people of the State of Alabama, in order to establish justice, ensure domestic tranquility and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama.

## ARTICLE I.

## Declaration of Rights.

That the great, general and essential principles of liberty and free government may be recognized and established, we declare

1. That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.

2. That all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient.

3. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship, nor pay tithes, taxes or other rate for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious tests shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner, affected by this religious principles.

4. That no law shall ever be passed to curtail or restrain the liberty of speech or of the press; and any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

5. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizures or searches; and that no warrant shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation.

6. That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf, if he elects so to do; and, in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and that he shall not be compelled to give evidence against himself, nor be deprived of life, liberty or property, but by due process of law; but the General Assembly may, by a general law, provide for a change of venue for the defendant in all prosecutions by indictment, and that such change of venue, on application of the defendant may be heard

and determined without the personal presence of the defendant so applying therefor, Provided, that at the time of the application for the change of venue the defendant is imprisoned in jail or some legal place of confinement.

7. That no person shall be accused, or arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but by virtue of a law established and promulgated prior to the offense and legally applied.

8. That no person shall, for an indictable offense, be proceeded against criminally, by information except in cases arising in the militia and volunteer forces when in actual service, or when assembled under arms as a military organization, or, by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in this Constitution; Provided, that in cases of misdemeanor, the General Assembly, may by law dispense with a grand jury and authorize such prosecutions and proceedings before Justices of the Peace or such other inferior courts as may be by law established.

9. That no person shall, for the same offense be twice put in jeopardy of life or limb; but courts may, for reasons fixed by law, discharge juries from the consideration of any case, and no person shall gain any advantage by reason of such discharge of the jury.

10. That no person shall be barred from prosecuting or defending, before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

11. That the right of trial by jury shall remain inviolate.

12. That in all prosecutions for libel or for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts under the direction of the court.

13. That all courts shall be open; and that every person, for any injury done him, in his land, goods, person or reputation shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay.

14. That the State of Alabama shall never be made a defendant in any court of law or equity.

15. That excessive fines shall not be imposed, nor cruel or unusual punishments inflicted.

16. That all persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident or the presumption great, and that excessive bail shall not, in any case be required.

17. That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this State.

18. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

19. That no person shall be attainted of treason by the General Assembly; and that no conviction shall work corruption of blood, or forfeiture of estate.

20. That no person shall be imprisoned for debt.

21. That no power of suspending laws shall be exercised, except by the General Assembly.

22. That no ex post facto law, or any law, impairing the obligation of contract, or making any irrevocable or exclusive grants of special privileges, or immunities, shall be passed by the General Assembly, and every grant of a franchise, privilege or immunity shall forever remain subject to revocation, alteration or amendment.

23. That the exercise of the right of eminent domain shall never be abridged nor so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies and subjecting them to public use the same as individuals, but private property shall not be taken or applied for public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner. Provided, however, that the General Assembly may, by law, secure to persons or corporations the right-of-way over the lands of other persons or corporations and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall in all cases be first made to the owner; and provided, that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporation other than municipal or for the benefit of any individual or association.

24. That all navigable waters shall remain forever public highways free to the citizens of the State and of the United States, without tax, impost or toll; and that no tax, toll, impost or wharf-

age shall be demanded or received from the owner of any merchandise or commodity for the use of the shores or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be expressly authorized by law.

25. That the citizens have a right, in a peaceable manner to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances, or other purposes by petition, address or remonstrance.

26. That every citizen has a right to bear arms in defense of himself and the State.

27. That no standing army shall be kept up without the consent of the General Assembly, and, in that case, no appropriation for its support shall be made for a longer term than one year, and the military shall in all cases and at all times be in strict subordination to the civil power.

28. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner nor in time of war but in a manner to be prescribed by law.

29. That no title of nobility or hereditary distinction, privilege, honor or emolument shall be granted or conferred in this State: and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

30. That immigration shall be encouraged, emigration shall not be prohibited and that no citizen shall be exiled.

31. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

32. That no form of slavery shall exist in this State; and there shall not be any involuntary servitude otherwise than for the punishment of crime, of which the party shall have been duly convicted.

33. The privilege of suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties, all undue influences from power, bribery, tumult or other improper conduct.

34. Foreigners who are, or may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens.

35. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property and when the government assumes other functions, it is usurpation and oppression.



36. In the government of this State, except in the instances in this Constitution hereinafter expressly directed or permitted, the Legislative Department shall never exercise the executive or judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative or executive powers, or either of them; to the end it may be a government of laws and not of men.

37. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the General Powers of Government and shall forever remain inviolate.

THE PRESIDENT—The question now is on the passage of the article, which under the rules will be submitted to any aye and nay vote. As many as favor its adoption as read will say aye and those opposed no as your names are called.

Upon the call of the roll, the vote resulted as follows:

#### AYES

Messrs. President,	Fitts,	Leigh,
Banks,	Fletcher,	Locklin,
Barefield,	Foshee,	Loman,
Beddow,	Foster,	Long (Butler),
Bethune,	Freeman,	Long (Walker),
Blackwell,	Gilmore,	Lowe (Jefferson),
Boone,	Glover,	Macdonald,
Brooks,	Grayson,	McMillan (Baldwin),
Bulger,	Greer, of Calhoun,	Malone,
Burns,	Greer, of Perry,	Martin,
Cardon,	Haley,	Maxwell,
Carmichael, of Colbert,	Handley,	Merrill,
Carnathon,	Harrison,	Miller (Marengo),
Case,	Heflin, of Chambers,	Miller (Wilcox),
Chapman,	Heflin, of Randolph,	Moody,
Cofer,	Henderson,	Murphree,
Coleman, of Greene,	Hodges,	NeSmith,
Cornwall,	Hood,	Norman,
Davis, of DeKalb,	Howell,	Norwood,
Davis, of Etowah,	Howze,	Oates,
Dent,	Inge,	O'Neal (Lauderdale),
deGraffenreid,	Jones, of Bibb,	O'Neill (Jefferson),
Duke,	Jones, of Hale,	Opp,
Eley,	Jones of Montgomery,	O'Rear,
Eyster,	Kirk,	Palmer,
Espy,	Knight,	Pearce,
Ferguson,	Ledbetter,	Pettus,

Pillans,	Selheimer,	Waddell,
Pitts,	Sentell,	Walker,
Porter,	Sloan,	Watts,
Proctor,	Smith (Mobile),	Weakley,
Reese,	Smith, Mac. A.,	Weatherly,
Reynolds (Henry),	Smith, Morgan M.,	White,
Robinson,	Sorrell,	Whiteside,
Rogers (Lowndes),	Spragins,	Williams (Barbour),
Rogers (Sumter),	Stewart,	Wilson (Clarke),
Samford,	Studdard,	Wilson (Washington),
Sanders,	Tayloe,	Winn,
Sanford,	Thompson,	
Searcy,	Vaughan,	

TOTAL—117.

## NOES

Byars,	Willet,
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TOTAL—2.

## ABSENT OR NOT VOTING

Almon,	Graham, of Montgomery,	Morrisette,
Altman,	Graham, of Talladega,	Mulkey,
Ashcraft,	Grant,	Parker (Cullman),
Bartlett,	Hinson,	Parker (Elmore),
Beavers,	Jackson,	Phillips,
Browne,	Jenkins,	Renfro,
Burnett,	Jones, of Wilcox,	Reynolds (Chilton),
Carmichael,	King,	Sollie,
Cobb,	Kirkland,	Spears,
Coleman, of Walker,	Kyle,	Williams (Marengo),
Craig,	Lowe (Lawrence),	Williams (Elmore),
Cunningham,	McMillan (Wilcox),	

THE PRESIDENT—It appears there are 116 ayes and noes 2, and the article is adopted. The article will be referred to the Committee on Order Consistency and Harmony.

MR. WHITE—Will it be printed?

THE PRESIDENT—The rules provide that it should be printed and referred to the Committee on Order, Consistency and Harmony.

The Convention here resumed the special order, the consideration of the report of the Committee on Executive Department.

The Clerk read Section 4 as follows:

Sec. 4.—Senator shall be at least 27 years of age and Representatives 21 years of age; they shall have been citizens and inhabitants of their respective counties or districts one year next

before their election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken; and they shall reside in their respective counties or districts during their terms of service.

MR. OATES—Mr. President, that is the old section, just as it is in the present Constitution, and I move its adoption.

MR. ROGERS (Lowndes)—I have a substitute to offer.

The clerk read the substitute as follows: "Substitute the word 'resident' in line 2 for the word 'inhabitant.'"

THE PRESIDENT—The question will be on the amendment offered by the gentleman from Lowndes. As many as favor the adoption of the amendment will say aye. The ayes have it. Is the Convention ready for the previous question?

MR. WATTS—I want to know whether, in the report, these words are included which were in the old Constitution in the second line: "They shall have been citizens and inhabitants of their respective counties," is the way it reads in the print, but the way it reads in the old Constitution of this State "for three years, and inhabitants of their respective counties."

THE CLERK—It is not here.

MR. WATTS—I would like to have time to put it in there.

THE PRESIDENT—There is an amendment pending now; no doubt the gentleman will have time to offer his amendment.

MR. DUKE—I have an amendment to offer: "Amend Section 4 of Article on Legislative Department by striking out the words 'twenty-seven' in the first line and inserting in lieu thereof 'twenty-five.'"

THE PRESIDENT—The question is on the amendment of the gentleman from Chambers. Is the Convention ready for the question?

MR. DUKE—I dislike to offer an amendment to a section that a committee from this Convention has left intact, and I would not do it, but for the fact that I think the section is inconsistent with some other sections of this Constitution and ought to be changed. Now, the amendment which I have offered changes the word "twenty-seven" to "twenty-five" in the first line of the section. It makes it read that the Senators shall be twenty-five years of age instead of twenty-seven as it stands in the old Constitution. Now, Mr. President, the old Constitution and all of the sections that we have adopted with reference to other officers do not require any officer to be over twenty-five years of age except the Governor of the State, and I cannot see why this Constitution

should require that State Senators should be twenty-seven years of age. Under the Constitution a man twenty-five years of age may be elected Secretary of State and perform the duties of that office. Under the Constitution, a man may be elected Auditor of your State at twenty-five years of age and perform the duties of that office. Under the Constitution, a man may be elected Treasurer of your State and take charge and have control of the funds of the State, and yet it does not require him to be over twenty-five years of age. According to the sections of the Constitution that we have thus far adopted, a Justice of the Supreme Court need not be over twenty-five years of age. A man may be Chief Justice of the Supreme Court of the State at twenty-five years of age; and yet, Mr. President, this committee, with its report framed after the old Constitution, says that a man who is elected to the office of Senator of this State must be twenty-seven years of age. Now, I cannot see why this difference, I cannot see why a man is to be considered competent to fill all these offices at the age of twenty-five years that he should be sufficiently mature to fill all the offices I have mentioned at twenty-five years old, and yet not be so mature as to fill the office of Senator of this State.

MR. WILLET—Will the gentleman allow me to ask a question?

THE PRESIDENT—Does the gentleman consent to be interrupted?

MR. DUKE—Yes sir.

MR. WILLET—Does not the gentleman recognize the difference between a clerical office and a representative office?

MR. DUKE—Yes, and in reply to that I will ask him if he thinks the office of Chief Justice of the Supreme Court of Alabama is a clerical office?

MR. WILLET—To some extent, yes.

MR. DUKE—Well, we differ about that. Not stopping there according to the Federal Constitution, a man may go to Congress and be but 25 years of age, and yet we say if he goes to the State Senate he must be 27 years old. Now, Mr. Chairman, I have no interest in this personally, everybody here knows that I am over 27 years of age, and I have no friend under 27 years of age that wants to be Senator, but I do not think this inconsistency should appear in this Constitution; it is unreasonable, Mr. President, to require it. While I say I have no friend that I know of who wants to fill the office of State Senator, yet in the language of the distinguished and eloquent gentleman from Montgomery, Governor Jones, this morning in his remarks on another Section of this Article, I say give the young men a chance, they are the hope of the country.

Now, Mr. President, in youth, while a man is young, is the time that he is qualified to perform the duties of life. You take for example the men that have made their impress upon the world's history, and it has been when they were young men. Napoleon Bonaparte was at the very height of his glory when he was 25 years of age. Caesar almost conquered the world, yet died a young man. Alexander had the world at his feet, and wept because he could find no other worlds to conquer when he was a young man, and I do not see, Mr. President, why it is that we should not make this amendment and allow a person who is 25 years of age to be elected to the office of Senator in this State—especially in view of the fact that we have other provisions that only require other officers to be 25 years of age, which are more important than the office of Senator.

MR. OATES—I believe the amendment is to strike out "twenty-seven" and insert "twenty-five?"

MR. DUKE—That is all.

MR. OATES — Well, I have no special objection to it. It stands that way in the present Constitution—twenty-seven, and that is the only reason why we retained it that way. The Committee passed the Section as they found it in the Constitution. I notice, however, in the copying, either by the Clerk or the printer, there are some words omitted which I will ask presently to have reinstated. It don't affect this question, however, of changing the age from 27 to 25. I have no special reason to favor it one way or the other. Either put it 27 or 25 as you desire.

MR. HEFLIN (Chambers)—Do I understand the Chairman to say that he has no objection?

MR. OATES—I have none. I just as leave put it at 25 as 27. The Committee voted it 27, and for that reason it is in there.

Mr. Boone here took the Chair.

MR. HEFLIN—As a member of the Committee, I opposed that majority report in order to allow the young men of 25 years of age to come to the Senate. I see no good reason when the Congress of the United States allowed a member to sit in that body at 25, that the State Senate should require a man to be 27 years of age before he could sit in a legislative body at home.

MR. CHAPMAN—May I ask the gentleman a question?

PRESIDENT PRO TEM—Does the gentleman yield for a question?

MR. HEFLIN—Certainly.

MR. CHAPMAN—Do you compare a Senator in the State Legislature of any age with a common Congressman of any age?

MR. HEFLIN—I admit the point of order is well taken.

MR. SAMFORD (Pike)—Will the gentleman permit a question?

MR. HEFLIN—Certainly.

MR. SAMFORD—How would the State of Alabama fare with thirty-three Senators 25 years old, and in the House 100 Representatives 21 years of age?

MR. DUKE—Ask him how Congress would fare with all the Representatives only 25 years of age?

MR. HEFLIN—I will ask the gentleman if he thinks in the course of human events that it would ever occur while the world stands, that the Senate would be composed of thirty-three Senators of the age of 25 years each, and the House be composed of 100 Representatives of the age of 21 years or between 21 and 25 years of age? It would not occur, Mr. President, in a thousand generations, no such thing would ever confront the people of Alabama, and I want to lift my voice here along the lines suggested by the gentleman from Montgomery this morning and endorsed by my colleague from Chambers, that what Alabama needs is to give more encouragement to her young men. If there are those here who are not willing to open the gates and permit them to compete with them before the people I ask them to reconsider, to let down the bars and let those of the twenty-five year limit come in, and give those young men an opportunity to come into this body and into the other end of the Capitol and be trained properly to make good servants of the people of Alabama. There can be no objection to it, Mr. President. The gentleman from Chambers (Mr. Duke) my colleague, has argued that the other officers of State are only required to be twenty-five years of age, except the Governor. As I said before, a Congressman from Alabama is not required to be but twenty-five years of age and why should we say here in the very organic structure of our law that a young man who stands up before his people competent in every respect to represent them in the Senate, and they desire him to represent them, he is met with this stumbling block in the fundamental laws of the State—you are not old enough. Mr. President, William Pitt was Prime Minister of England when he was twenty-five years of age. I trust the gentlemen do not argue that a man must be old before he has any sense, if so we differ on that proposition. We have seen a negative answer given to that contention by even boys of sixteen years of age. I favor, Mr. President, putting in the amendment at twenty-five years. I have spoken longer than I intended, and as there is practically no opposition to the twenty-five year limit, I move the previous question.

THE PRESIDENT PRO TEM—The question is, shall the previous question be ordered?

MR. WATTS—Is that on the whole section?

THE PRESIDENT PRO TEM—No, sir; on the amendment.

A vote being taken, the previous question was ordered. The question then recurred upon the adoption of the amendment, and on a division, the amendment was adopted by 73 yeas to 39 nays.

MR. OATES—I desire to offer an amendment to supply an omission that has been made.

The Clerk read the amendment as follows: "Amend by adding after the word 'citizen' in line two, the following: 'An inhabitant of this State for three years.'"

THE PRESIDENT PRO TEM—I will state to the gentleman from Montgomery that an amendment has already been adopted offered by the gentleman from Lowndes inserting the word "resident" instead of "inhabitant."

MR. OATES—That is true, the Clerk will change that. I will ask the Clerk to read the amendment as it is now.

The Clerk read as follows: "They shall have been citizens and residents—as amended the word residents."

MR. OATES—I am asking about the original bill.

THE CLERK—That is what I am reading from.

MR. OATES—Read the balance of the Section.

The Clerk read as follows: "Shall be citizens and inhabitants"—changed to "residents"—"of their respective counties and districts one year next before their election."

MR. OATES—That is not the right place. Send my amendment back to me.

MR. EYSTER—I have an amendment I wish to offer.

The clerk read the amendment as follows: "Amend Section 4 by striking out twenty-one in the first and second lines and inserting in lieu thereof the word twenty-five."

MR. PETTUS—I move to lay that amendment on the table.

A vote being taken, the amendment was tabled.

MR. BURNS—Are amendments in order?

THE PRESIDENT PRO TEM—Yes.

MR. BURNS—I have a substitute.

MR. SAMFORD (Pike)—I move the adoption of this section as it stands, and on that I call for the previous question.

THE PRESIDENT PRO TEM—The gentleman from Dallas has an amendment.

MR. ROGERS SUMTER—I make the point of order that it is against the rules to wait upon a gentleman to prepare an amendment.

THE PRESIDENT PRO TEM.—The amendment has already been handed to the clerk.

The clerk read the amendment as follows: Amend—I don't know what; it don't say—"shall have been a white qualified election for three years."

MR. SAMFORD (Pike)—I move to lay the amendment on the table.

MR. BURNS—That is to keep "niggers" from being Senators.

A vote being taken, the amendment was tabled by 50 ayes to 38 noes on division.

MR. DUKE—I move the adoption of the section, and upon that I call for the previous question.

THE PRESIDENT—The gentleman from Montgomery (Mr. Oates) desired to interline two or three words that are in this section in the old Constitution and that seem to be material to the sense of the section, and which by inadvertance has been omitted. The amendment of the delegate from Montgomery was read as follows:

Amend by adding after the words citizens in line 2 of the printed copy the following: "And residents of this State for three years."

MR. SAMFORD—I call the attention of the gentleman from Montgomery to the fact that if it reads that way, according to my conception, it will not have any sense. That is the way it appears to me.

THE PRESIDENT PRO TEM—Read the section with the amendment in it as it would appear if the amendment is adopted.

The clerk read as follows: Senators shall be at least 25 years of age and Representatives 21 years of age. They shall have been citizens and residents of this State for three years and residents of their respective counties or districts one year next before their election.

MR. OATES—I do not understand that the word "inhabitant" has been stricken out but once.



THE CLERK—It does not appear in the report but once.

MR. BURNS—Is an amendment in order. I want to strike out that residents and citizens and insert qualified electors.

MR. OATES—I ask the Secretary to read this section with the insertion of this amendment.

The Clerk then read the section as follows: "Senators shall be at least twenty-five years of age and representatives twenty-one years of age. They shall have been citizens and residents of this State for three years and residents of their respective counties or districts one year next before their election." That is the way it will read as amended by your amendment.

MR. OATES—It ought to be inhabitants.

THE CLERK—That inhabitants was stricken out.

MR. OATES—I was inquiring whether it was stricken out the first or second time.

THE CLERK—It only appears in your report in one place. It is left out in the first place or the second time, I don't know which.

MR. OATES—Shall have to be citizens and resident of this—inhabitants of their respective counties and districts.

THE CLERK—I thought the word "inhabitants" was amended by the word "residents" as amended by Mr. Rogers.

MR. OATES—That is all right, I move the adoption of the section.

**(Mr. Knox here took the chair.)**

The Clerk then read amendment as follows: "Amend by adding after the word "citizens" in line two "and residents of this State three years."

And upon a vote being taken the amendment was adopted.

MR. BURNS—I would like to inquire what became of the amendment I sent up?

THE PRESIDENT—The Secretary will read the amendment offered by the gentleman from Dallas.

The Clerk then read the amendment offered by Mr. Burns as follows: "By striking out residents and citizens and insert 'qualified electors.'"

MR. BURNS—I want to ask the distinguished Chariman—

A DELEGATE—I move to lay the amendment on the table.

MR. REESE—I rise to a point of order. The gentleman from Dallas had the floor. The Chair recognized him, and a motion to table his amendment is out of order while the gentleman has the floor. It is discourteous on the part of the gentleman to make a motion to table his amendment.

MR. OATES—I do not understand who was making the motion to table.

MR. BURNS—Do not the words “qualified elector” cover both “residents and citizens?”

MR. OATES—It is wholly unnecessary. The section is just as it has been in the Constitution for twenty-five years, except the change in the age of the Senator and the change of the one word that has been made.

MR. BURNS—I want to ask one question: Don't the words “qualified electors” mean as much and embrace “citizens and residents?” Can he be a qualified elector without being a citizen and a resident?

THE PRESIDENT—Has the gentleman from Dallas the gentleman from Montgomery under cross-examination?

MR. BURNS—I want him to answer that question.

MR. OATES—The only reply I have to that is to move to lay the amendment of the gentleman from Dallas on the table.

On a vote being taken upon a division it resulted in 55 ayes and 39 noes and the motion to table the amendment was carried.

MR. OATES—I move the previous question upon the adoption of the section as amended.

And upon a vote being taken the section as amended was adopted.

Section 5 was then read as follows:

Section 5. The legislature shall meet quadrennially, at the Capitol in the Senate chamber and in the hall of the House of Representatives (except in cases of the destruction of the Capitol, or epidemics, when the Governor may convene them at such place in the State as he may deem best) on the day specified in this Constitution, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under this Constitution, nor longer than fifty days at any subsequent session.

MR. WILLIAMS (Barbour)—I have an amendment to Section 5.

The Clerk then read the amendment as follows:

To amend Section 5 by striking out the word "quadrennially" and inserting in place of the same the word "biennially."

MR. WILLIAMS (Barbour)—I have only a few words to submit on the amendment. It will be seen it refers only to the sessions of the Legislature, and not to the election of the members. It seems to me, sir, that four years is too long a period in which there will be no session of the Legislature. I care nothing about how long a member of the Legislature may be chosen for; but I do think that the Legislature ought to meet oftener than once in four years. I believe that the elections ought to be oftener than once in four years, but that is not the question now. It is a question of the matter of sessions. A legislator is the nearest man to his people, and when they are in session they represent the body of the sovereignty of the State of Alabama. We profess to be a progressive people, keeping up with the changes and requirements of the times. At least it is our wish to do so. I don't know what the custom may be in other States, nor do I care. I was born and reared in the State of Alabama and my familiarity with political policies is confined to this State. All of my information as to proper policies and procedure is with reference to my own State. It would be an experiment to keep our Legislature silent for four years. We would almost forget we had a Legislature. It is too long a period for a bad law to run or to wait for the enactment of a good one. Legislatures sometimes make unwise laws, and if the people can't be rid of such laws short of a period of four years, they will get to indulging the feeling akin to revolution and almost equally so will their sentiment extend when they want a new law which they cannot get short of such a period. We would forget the acquaintance of our members, sir, and they would forget the business of legislation if they could not meet oftener than every four years. What is the good of it? I take the liberty of saying that the best system I ever saw was in my youth in the State of South Carolina, the Legislature met every winter and stayed in session only thirty days. The members are accountable to the people. They make their changes with the people. They get their directions from the people who give them their commissions. It is not my purpose to make a regular speech, because I do not believe it would be welcomed, and I have no disposition to undertake it. I say it is an untried thing for the Legislature of the State of Alabama to sit only once in every four years. I would be an untried situation to the people who could hardly become familiar with their Representatives if they did not see them in official session oftener than once in every four years. It would be an untried condition of the affairs of the State if they could not have an examination into the weak places and remedy them by fit legislation injected oftener than once in four years. It is too long a dearth, sir. There is unwise legislation perhaps at every session of the Legislature and at every session something is left out that ought

to go in. I am not undertaking to interfere with the period for which you elect the members. Let them go to the people and council with them, and learn not only their duty but how to do it at least once in every two years. Without saying more I respectfully insist upon the amendment.

MR. LONG—I offer a substitute for the original Section, and the amendment offered by the delegate from Barbour.

The substitute was read as follows :

Amend Section 5 by striking out the word "quadrennial" in the first line and insert "biennial." Also by inserting in lieu of the word "sixty" in the third line "thirty," and also strike out the word "fifty" and insert the word "twenty-five" in lieu thereof.

MR. LONG—I shall not attempt to make a speech. That amendment allows the Legislature to meet every two years and instead of being an additional expense as it is claimed, it will be a saving. The committee's report fixes the length of the first session at sixty days and I reduce that to thirty days. Then instead of fifty days as in the other part of the Section, I make it twenty-five days.

MR. HARRISON—Do you think the next Legislature could discharge its duties under this Constitution in thirty days.

MR. LONG (Walker)—Yes, I think they could.

MR. FOSTER—Will the gentleman yield to me for a question?

MR. LONG (Walker)—If not taken out of my time I will, but if it is to be taken out of my time I cannot yield.

THE PRESIDENT—It certainly will be taken out of the gentleman's time.

MR. LONG (Walker)—Then I do not yield. Under this Section the Governor can call the Legislature in extra session and the effect of having the sessions of the Legislature four years apart will be that that will have to be done frequently and that will be an additional expense. Everybody familiar with Legislatures know that they draw two mileages anyhow. This amendment of mine fixes the session of the Legislature so that it meets every two years and can only stay in session 25 days after the first Legislature following this Constitution. If the distinguished gentleman from Lee or the members on this floor wish the Legislature first in session after the adoption of this Constitution to sit for forty, or fifty, or sixty days, that can be left as in the section and I will limit the sessions thereafter to twenty-five days. I am perfectly willing to let the matter stand that way.

MR. HARRISON—I suggest not to strike out the sixty.

MR. LONG (Walker)—Then let the sixty stand in the place of the thirty.

THE PRESIDENT—The delegate from Walker asks unanimous consent to strike out that portion of his amendment. Is there objection? The Chair hears none and it may be done.

MR. LOWE (Jefferson)—I had risen for the purpose of introducing the amendment which was offered by the delegate from Barbour. The proposition suggested by the committee is an innovation upon the custom which has prevailed in Alabama since it was admitted to the Union. It is more than that, it is a radical innovation, at variance with the customs of all the governments in the world having representative form of Government that I know of. Have we gotten to be afraid of the people? Have we gotten to be afraid to trust them to hold an election? Have the people become tired of electing their officers and representatives? Why, you propose for the first time in the history of the State that the immediate representatives of the people, the law-making power, shall be elected for four years. The theory of representative government is that the law-making body must be in immediate contact with the people, and come fresh to the Legislature from the body of the people. What motive can inspire this change? I beg of you before you tear down the old Constitution, before you change the old law and the old rule to ask why the change should be made, what good reasons can be assigned for it? Is it caprice, is it a fad with this Convention or is there a motive behind it? I would rather believe it was a mere fad than to recognize, as I do recognize, that there is a motive behind it. **The people have a right to be heard in the legislative halls by their representatives coming fresh from the homes of the people.** They say we have too many elections and yet the men who complain of elections are the men who raise their voices for education and for the bare-footed boys. What better system of education can prevail in any country than frequent elections and discussions of public questions before the people. How many young men in America have gotten their first inspiration from discussions upon the public stump of public matters? Why should we fear to have frequent elections? It does not disturb the people so much. No man has to go to a public discussion who does not want to go and yet we find the people coming to public meetings when public matters are to be debated and discussed. I say it is a better system of education than you can find in any ordinary system of text books. It tends to inspire the old men and the youth of the land.

I am in favor of concentrating our elections. I see no reason why the State elections should not be held on the same day that the Federal elections are held. I can see good reasons why it

should have been changed when there were Federal election laws which would have controlled our elections if held on the same day; but now that those laws have been wiped from the statute books, I can see no reason why the elections should not be held on the same day. Always conferring on the Legislature the power to change the date of the election if the occasion should ever arise justifying or demanding the change.

But I believe we can illy defend the proposition when we go back to the people that we have taken from them the right to select fresh representatives from their own midst to the Legislature.

Everybody recognizes the influences that mould legislation. All of us know that the special interests that seek their own aggrandizement from the General Assembly are more influential than the mere desire for the public good. The great mass of the people have no influence here representing them except the fresh impulse their representatives bring here; but all the special interests are represented around the halls and doors and in the Capitol itself. And they want long terms. They say the people want to be relieved of the necessity of electing their representatives. Have the people ever said so? Has there ever been a public meeting in Alabama in which the people said they did not want the opportunity to elect their representatives every two years? In many States they have it every year and I think it would be better to have it every year in Alabama. I think it would be better to have more frequent elections than to go to this extreme of elections every four years. I shall always vote against the proposition to take from the people the right to elect representatives except once every four years. I think it preferable to have elections more often. They are the greatest inspiration to the young men of this country and whenever we come to believe that we cannot trust of electing their officers, whenever we come to believe that we cannot trust the people to elect their officers, then we should, as they did of old, cry for a King.

MR. ROGERS (Sumter)—I rise to oppose the amendment offered by the gentleman from Barbour and also the substitute offered by the gentleman from Walker.

It is with a great deal of regret that I stand here in opposition to the distinguished gentleman from Barbour, whose gray hairs and long years of service and whose busy life stand as a monument to his rectitude of character.

But upon a grave proposition like this. I feel that every man should accord to his neighbor that same honesty of purpose which he asks to be accorded to him.

I believe I stand here representing every class of citizens in the State of Alabama except perhaps the youthful legislator

and the professional politician. I believe I stand upon this floor representing the great mass of the people of the State of Alabama who wish to be let alone and freed from the annoyance placed upon them by biennial sessions of the Legislature.

I heard this morning with one single exception the most remarkable reason given by a distinguished ex-Governor for holding biennial sessions. He gave as a reason in favor of that proposition that the Legislature was a training school for the youth of the State. Is it a fact that we must turn loose upon the people of Alabama the young men of the State of Alabama to tamper with the liberties and rights of the people, because the Legislature is a training school? That is one of the strangest propositions I ever heard in my life. If that is true it would be infinitely better to institute another training school for the youth to teach them the difference between an amendment and a substitute, for I submit it is a great thing to know when the previous question should be put.

The other remarkable reason on a par with the one assigned this morning by the distinguished ex-Governor was in the city of Tuscaloosa in 1884, when a candidate for Treasurer asked the people to vote for him because he used to sell watermelons from a wagon. These are the two remarkable reasons that I have heard given, and I think they stand unique in the history of Alabama.

Now, Mr. President, after long and careful consideration, your Committee on Legislative Department have reported this ordinance. The first time this matter was brought up by myself in that committee, I could scarcely get a respectful hearing. The second time it was voted down by a majority of four, but upon the last time the committee report it almost unanimously. The reason for this was because it was so clear. Gentlemen speak of it as an innovation. Now, I am not answering the gentleman from Jefferson now because if the gentleman had been here this morning and had been participating in the proceedings of this house, he would know that the question he is raising was settled on Section 3.

MR. LOWE—I was here this morning.

MR. ROGERS (Sumter)—Were you here when Section 3 was adopted?

MR. LOWE (Jefferson)—I was.

MR. ROGERS (Sumter)—Section 3 settled the question of elections, and that was all you addressed your remarks to, and as that was settled this morning, your remarks, I believe, were entirely out of order.

Now, the reasons why we should have the sessions of the Legislature only once every four years are these. First, it will save

the State of Alabama every four years more than \$100,000. Gentlemen speak of this sum of money as if it were a *bagatelle*—mere pocket money. But in twenty years it amounts to a great deal to the people of the State of Alabama. The second reason for the four years' session is that it secures certainty and fixidity of the law. As it is now, you can hardly know from time to time as the Legislature meets what the laws are. It takes such a length of time to get the laws printed that lawyers can hardly keep up with them, and the common people are unable to do it at all. We never know when a law is going to be changed.

Another reason is, we can hardly find out the operations of a law in less than four years. A good law has to run that long before the people can learn its advantages, and when we adopt this we will be in line with the States of Mississippi and Louisiana. The ordinance in the Constitution of Mississippi which is the pioneer State in this matter, is drawn by one of the greatest Southerners that ever lived.

MR. BROOKS—The gentleman stated that we are in line with Mississippi and Louisiana. I would like for the gentleman to show where quadrennial sessions are held in the State of Louisiana.

MR. ROGERS (Sumter)—I certainly understand that quadrennial sessions have been held in Louisiana.

MR. BROOKE—The Louisiana Convention of 1898 adopted biennial sessions of the Legislature, and biennial elections.

MR. LONG (Walker)—You have stated that it costs a great deal to hold elections every two years; why is not my amendment cutting the sessions down to twenty-five a great saving, and what is your objection to it?

MR. ROGERS (Sumter)—The objection is when you limit the Legislature to twenty-five days they are apt to act hastily, and without well considering. When they come here and know they only have twenty-five days within which to do their work they cannot properly consider it, and I object to it on that ground.

Now so far as the motives behind this measure; the only motive I know of is the desire to protect the interests of the people of Alabama.

MR. BOONE—Is it not your experience that the mass of people throughout the State with whom you have talked on the subject heartily endorse the committee's report?

MR. ROGERS (Sumter)—I will state without hesitation that nine-tenths of the people of the county of Sumter with whom I am as close as any man is with his constituents, want this done. Every man who approached me asked me for God's sake to relieve



them from the biennial sessions of the Legislature. They said, "We cannot tell whether a law is a law or not. It takes nearly two years before it is printed and then the Legislature repeals it. We want certainty. We want to know that a law is going to run a certain length of time and we, therefore, object to biennial sessions of the Legislature."

Now, there is ample provision made whenever the interests of Alabama are menaced in any way; the Governor can call a special session.

MR. FOSTER—Do you think the Representatives of the people ought to be at the will of the Governor?

MR. ROGERS—I do not. I do not think the Legislature ought to meet at the will of the Governor, but when we put this provision in for the four years, we are representing the people and not the Governor of the State of Alabama. The people of the State of Alabama is speaking through us as to make the change.

MR. FOSTER—I understood the gentleman to say whenever there was a need, the Governor could call the Legislature into session.

MR. ROGERS—That was the provision when it was two years.

MR. FOSTER—If sessions of the Legislature at wide intervals are the proper thing, why not make it ten years instead of four?

MR. ROGERS—It would perhaps be better if we could have it ten years; but we live in a great State, where changes may come in a time shorter than that, and in reply to the intimated suggestion of the gentleman, if two years is a good time to hold it, why not hold it all the time?

MR. FOSTER—That is not an answer to my question at all.

MR. ROGERS—I will allow the Convention to judge between my friend and me as to whether my answer was not pertinent. Now, I move the previous question on the amendment and the section.

MR. SAMFORD—I ask that they be divided.

THE PRESIDENT—They certainly will be divided; they are separate questions. Where a committee reports a section and an amendment is offered to the section and an amendment to that amendment they are separate questions and it is impossible to join them. The question will first be submitted on the amendment to the amendment and then on the amendment and then on the section.

A vote being taken the main question was ordered.

**THE PRESIDENT** — The question recurs on the amendment—

**MR. LOWE (Jefferson)**—A division of the question was demanded. The amendment of the delegate from Walker embraces three changes in the section and certainly there can be a division of that question. I ask for a reading of the amendment of the delegate from Walker.

The amendment of the delegate from Walker was read as follows: "Amend Section 5 by striking out the word 'quadrennially' in the first line and inserting 'biennially' instead, also by striking out the word 'fifty' in the sixth line and inserting 'twenty-five' in lieu thereof.

**MR. LOWE (Jefferson)**—I make the point of order and submit that is easily susceptible of a division.

**THE PRESIDENT**—The point of order is overruled.

**MR. LONG (Walker)** — I would ask the Chairman of the Committee that if the legislature only meets every four years might not it happen that a United States Senator would have to be elected when there was no legislature in session and would not you be without a Senator elected by the legislature for possibly two years or more.

**MR. OATES**—All of those things are possible, but not likely to occur.

The yeas and nays on the amendment of the delegate from Walker were called for by Mr. O'Neal and the call was sustained.

**MR. LOWE (Jefferson)**—I dislike to be insistent but I desire to demand a division of the question. The question involved in the amendment of the delegate from Walker is in the first place to strike out the word "quadrennially" and insert the word "biennially."

**MR. BULGER**—I rise to a point of order.

**THE PRESIDENT** — The gentleman will please state the point of order.

**MR. BULGER**—I understand the question has been ruled upon by the Chair to which the gentleman is now speaking and that is settled.

**MR. LOWE (Jefferson)**—I was in hopes that the Chair had not understood the point of order and that thereby I should not need to take an appeal. The first proposition is to strike out "quadriennially"—

MR. FITTS—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point.

MR. FITTS—The gentleman made his point of order and the Chair ruled against it and the gentleman did not appeal and the roll call was begun and the President had voted.

MR. LOWE (Jefferson)—If the gentleman had been paying attention he would have seen—

THE PRESIDENT—In the opinion of the Chair the point of order is well taken. The gentleman from Jefferson is out of order.

MR. LOWE (Jefferson)—The Chair refuses to allow my appeal?

THE PRESIDENT—The Chair has heard no appeal from the gentleman from Jefferson. If the gentleman appeals the Chair will submit the appeal to the house.

MR. LOWE (Jefferson)—I want the Chair—

THE PRESIDENT—Does the gentleman appeal?

MR. LOWE (Jefferson)—I do appeal.

MR. O'NEAL—We are not voting on all the amendments. Are we not voting only on the amendment of the delegate from Walker?

THE PRESIDENT—Only on the amendment of the gentleman from Walker. The Chair has ruled on the point of order. The roll call had commenced, and the gentleman interrupts the roll call. The gentleman from Tallapoosa makes the point of order and the point of order is sustained. The gentleman from Jefferson appeals from the ruling of the Chair and the question is, shall the ruling of the Chair be sustained?

MR. LOWE—I rise to a question of privilege. I hope it will not go out from the Chair that pending a roll call I interrupted. I was on my feet demanding recognition and the Chair deliberately turned and recognized some other delegate.

THE PRESIDENT—The Chair would state that the gentleman from Jefferson is not entitled to the undivided attention of the Chair of this Convention.

MR. LOWE (Jefferson)—When a gentleman arises—

THE PRESIDENT—The gentleman from Jefferson is out of order and will please be seated.

MR. LOWE—The Chair understands that I am appealing from the decision of the Chair.

THE PRESIDENT—The question is shall the ruling of the Chair be sustained.

A vote being taken viva voce the Chair was sustained.

THE PRESIDENT—The question recurs upon the amendment of the delegate from Walker which is offered as an amendment to the amendment of the delegate from Barbour to the section as reported by the Committee. As many as favor the adoption of the amendment will say aye and those contrary will say no. It seems to the Chair—

MR. BULGER—The ayes and noes were called for, Mr. President, and the call was sustained.

THE PRESIDENT—The interruption and the appeal diverted the attention of the Chair and the Chair had forgotten. The Clerk will call the roll.

The result of the roll call was as follows:

#### AYES.

Bartlett,	Harrison,	Long (Walker),
Beddow,	Henderson,	O'Neill (Jefferson),
Carmichael, of Coffee,	Hinson,	Sanford,
Grayson,	Jones, of Bibb,	Waddell,
Haley,	Ledbetter,	Winn,
Total—15.		

#### NOES.

Messrs. President,	Eyster,	Jones, of Hale,
Banks,	Espy,	Jones, of Montgomery,
Barefield,	Ferguson,	Kirk,
Bethune,	Fitts,	Knight,
Blackwell,	Fletcher,	Leigh,
Boone,	Foshee,	Locklin,
Brooks,	Foster,	Long (Butler),
Browne,	Freeman,	Lowe (Jefferson),
Bulger,	Gilmore,	McMillan (Baldwin),
Byars,	Glover,	Malone,
Carnathon,	Graham, of Montgomery,	Martin,
Case,	Greer, of Calhoun,	Maxwell,
Chapman,	Greer, of Perry,	Merrill,
Cobb,	Handley,	Miller (Marengo),
Cofer,	Heflin, of Chambers,	Miller (Wilcox),
Coleman, of Greene,	Heflin, of Randolph,	Moody,
Cornwall,	Hodges,	Murphree,
Davis, of DeKalb,	Hood,	NeSmith,
Davis, of Etowah,	Howell,	Norman,
Duke,	Howze,	Norwood,
Eley,	Inge,	Oates,

O'Neal (Lauderdale),	Rogers (Lowndes),	Studdard,
O'Rear,	Rogers (Sumter),	Tayloe,
Palmer,	Samford,	Thompson,
Parker (Elmore),	Sanders,	Vaughan,
Pearce,	Searcy,	Walker,
Pettus,	Selheimer,	Watts,
Phillips,	Sentell,	Weakley,
Pillans,	Sloan,	Weatherly,
Pitts,	Smith (Mobile),	White,
Porter,	Smith, Morgan M.,	Whiteside,
Proctor,	Sorrell,	Williams (Barbour),
Reese,	Spears,	Williams (Marengo),
Reynolds (Henry),	Spragins,	Wilson (Clarke),
Robinson,	Stewart,	Wilson (Wash'gton),
Total—105.		

## ABSENT OR NOT VOTING.

Almon,	deGraffenreid,	McMillan (Wilcox),
Altman,	Graham, of Talladega,	Morrisette,
Ashcraft,	Grant,	Mulkey,
Beavers,	Jackson,	Opp,
Burnett,	Jenkins,	Parker (Cullman),
Burns,	Jones, of Wilcox,	Renfro,
Cardon,	King,	Reynolds (Chilton),
Carmichael, of Coffee,	Kirkland,	Smith, Mac. A.,
Coleman, of Walker,	Kyle,	Sollie,
Craig,	Lomax,	Willet,
Cunningham,	Lowe (Lawrence),	Williams (Elmore),
Dent,	Macdonald,	

So the amendment of the delegate from Walker was tabled.

During the roll call:

MR. CARDON—What are we voting on, Mr. President?

THE PRESIDENT—On a motion to table the amendment offered by the delegate from Walker.

MR. CARDON—Well, what is the amendment?

THE PRESIDENT—It is changing the sessions of the legislature from quadrennial as reported by this Committee to biennial.

MR. CARDON—I am in favor of that.

THE PRESIDENT—And in changing the length of the session from fifty days as reported by the Committee to twenty-five days.

MR. CARDON—I am against that.

How does the gentleman vote?

MR. CARDON—I am in favor of one and opposed to the other. I won't vote.

After the roll call:

THE PRESIDENT—The question recurs on the amendment of the delegate from Barbour.

The yeas and nays were demanded by Mr. O'Neal, but the call was not sustained.

MR. O'NEAL—I would like to ask a verification to see whether the call is sustained.

The call was then sustained, and the result of the roll call was as follows:

#### AYES.

Banks,	Greer, of Perry.	Parker, of Elmore,
Beddow,	Haley,	Phillips,
Brooks,	Handley,	Proctor,
Bulger,	Heflin, of Chambers,	Robinson,
Burns,	Heflin, of Randolph,	Rogers, of Lowndes,
Byars,	Hood,	Samford,
Cardon,	Howell,	Sanford,
Carmichael, of Colbert,	Jones, of Montgomery,	Selheimer,
Case,	Jones, of Bibb,	Sollie,
Cobb,	Ledbetter,	Spears,
Duke,	Leigh,	Thompson,
Eyster,	Long, of Walker,	Watts,
Espy,	Lowe, of Jefferson,	Weakley,
Foshee,	Martin,	White,
Foster,	Moody,	Williams, of Barbour,
Grayson,	O'Neill (Jefferson),	Winn,
Total—48.		

#### NOES.

Messrs. President,	Eley,	Inge,
Barefield,	Ferguson,	Jones, of Hale,
Bartlett,	Fitts,	Kirk,
Bethune,	Fletcher,	Knight,
Blackwell,	Freeman,	Locklin,
Boone,	Gilmore,	Long, of Butler,
Browne,	Glover,	McMillan (Baldwin),
Carnathon,	Graham, of Montgomery,	Malone,
Chapman,	Greer, of Calhoun,	Maxwell,
Cofer,	Harrison,	Merrill,
Coleman, of Greene,	Henderson,	Miller, of Marengo,
Cornwall,	Hinson,	Miller, of Wilcox,
Davis, of DeKalb,	Hodges,	Murphree,
Davis, of Etowah,	Howze,	NeSmith,

Norman,	Reese,	Studdard,
Norwood,	Reynolds (Henry),	Tayloe,
Oates,	Rogers, of Sumter,	Vaughan,
O'Neal, of Lauderdale,	Sanders,	Waddell,
Opp,	Searcy,	Walker,
O'Rear,	Sentell,	Weatherly,
Palmer,	Sloan,	Whiteside,
Pearce,	Smith, of Mobile,	Williams, of Marengo,
Pettus,	Smith, Morgan M.,	Wilson, of Clarke,
Pillans,	Sorrell,	Wilson, of Washington,
Pitts,	Spragins,	
Porter,	Stewart,	
Total—76.		

# ABSENT OR NOT VOTING.

Almon,	Graham, of Talladega,	McMillan, of Wilcox,
Altman,	Grant,	Morrisette,
Ashcraft,	Jackson,	Mulkey,
Beavers,	Jenkins,	Parker, of Cullman,
Burnett,	Jones, of Wilcox,	Renfro,
Carmichael, of Coffee,	King,	Reynolds, of Chilton,
Coleman, of Walker,	Kirkland,	Smith, Mac A.,
Craig,	Kyle,	Willet,
Cunningham,	Lomax,	Williams, of Elmore,
Dent,	Lowe, of Lawrence,	
deGraffenreid,	MacDonald,	

So the amendment was rejected.

MR. ROGERS (Sumter)—I move a reconsideration of the vote and I move to lay that motion on the table.

MR. O'NEAL—I make the point of order that that cannot be done without a suspension of the rules.

MR. ROGERS (Sumter)—Then I move a suspension of the rules that the reconsideration may be moved for now.

MR. O'NEAL—On that I call for the ayes and noes.

The call was sustained, and the result of the roll call was as follows:

# AYES.

Messrs. President,	Case,	Espy,
Bethune,	Cofer,	Ferguson,
Blackwell,	Coleman, of Greene,	Fitts,
Boone,	Cornwall,	Fletcher,
Browne,	Davis, of DeKalb,	Foshee,
Byars,	Davis, of Etowah,	Gilmore,
Carnathon,	Eley,	Glover,

Greer, of Calhoun,  
Harrison,  
Hodges,  
Howze,  
Inge,  
Jones, of Bibb,  
Jones, of Hale,  
Kirk,  
Knight,  
Leigh,  
Locklin,  
McMillan, of Baldwin,  
Malone,  
Maxwell,  
Merrill,

Miller (Marengo)  
Miller (Wilcox),  
Murphree,  
Norman,  
Norwood,  
Oates,  
O'Rear,  
Palmer,  
Pearce,  
Phillips,  
Pillans,  
Pitts,  
Porter,  
Reynolds, of Henry,  
Rogers (Sumter).

Sanders,  
Searcy,  
Sentell,  
Sorrell,  
Spragins,  
Stewart,  
Stoddard,  
Vaughan,  
Waddell,  
Walker,  
Weatherly,  
Whiteside,  
Williams (Marengo),  
Winn.

Total—65.

#### NOES.

Banks,  
Barefield,  
Bartlett,  
Beddow,  
Brooks,  
Bulger,  
Burns,  
Cardon,  
Carmichael, of Colbert,  
Cobb,  
Duke,  
Eyster,  
Foster,  
Freeman,  
Graham, of Montgomery,,  
Grayson,  
Greer, of Perry,  
Haley,  
Heflin, of Chambers,  
Total—55.

Heflin, of Randolph,  
Henderson,  
Hinson,  
Hood,  
Howell,  
Jones, of Montgomery,  
Ledbetter,  
Long, of Butler,  
Long, of Walker,  
Lowe, of Jefferson,  
Martin,  
Moody,  
NeSmith,  
O'Neal (Lauderdale),  
O'Neill, of Jefferson,  
Opp,  
Parker (Elmore),  
Pettus,  
Proctor,

Reese,  
Robinson,  
Rogers (Lowndes),  
Samford,  
Sanford,  
Selheimer,  
Smith (Mobile),  
Sollie,  
Spears,  
Tayloe,  
Thompson,  
Watts,  
Weakley,  
White,  
Williams (Barbour),  
Wilson (Clarke),  
Wilson (Wash'gton).

#### ABSENT OR NOT VOTING.

Almon,  
Altman,  
Ashcraft,  
Beavers,  
Burnett,  
Carmichael, of Coffee,  
Chapman,  
Coleman, of Walker,  
Craig,

Cunningham,  
Dent,  
deGraffenreid,  
Graham, of Talladega,  
Grant,  
Handley,  
Jackson,  
Jenkins,  
Jones, of Wilcox,

King,  
Kirkland,  
Kyle,  
Lomax,  
Lowe, of Lawrence,  
Macdonald,  
McMillan (Wilcox),  
Morrisette,  
Mulkey,



Parker (Cullman),  
Renfro,  
Reynolds (Chilton),

Sloan,  
Smith, Morgan M.,  
Smith, Mac. A.,

Willet,  
Williams (Elmore).

MR. WILSON (Clarke)—I rise to inquire for what purpose the motion to suspend has been made.

THE PRESIDENT—The motion to lay on the table the motion to reconsider.

MR. WILSON (Clarke)—What motion to reconsider.

THE PRESIDENT—To reconsider the vote whereby the Convention refused to adopt the amendment of the delegate from Barbour.

MR. WILSON (Clarke)—Then under the rules that motion should be forthwith considered and does not go over until tomorrow and I direct the attention of the Chair to the last clause of Rule 27. That is a mere incidental question and not the main question.

MR. WHITE—I make the point of order that the gentleman's point of order came too late. The vote has been taken and the result announced.

THE PRESIDENT—In the opinion of the Chair the point of order is not too late. The gentleman moved to reconsider, and then moved to suspend the rules, which as the gentleman calls to the attention of the Chair under the rule as to incidental or subsidiary questions was unnecessary. The motion to reconsider was in order.

MR. O'NEAL (Lauderdale)—I rise to a point of order.

MR. ROGERS (Sumter)—That was the position taken by the mover of this matter at first, but he yielded to the decision of the Chair. Now renewing my motion, I move the reconsideration of—

THE PRESIDENT—The motion to reconsider is pending.

MR. O'NEAL (Lauderdale)—I rise to a parliamentary inquiry.

THE PRESIDENT—The gentleman from Sumter moves to lay the motion to reconsider upon the table.

MR. O'Neal (Lauderdale) again sought recognition.

THE PRESIDENT—The gentleman from Lauderdale will state the point of inquiry.

MR. O'NEAL (Lauderdale)—This rule says a motion to reconsider a vote upon any incidental or subsidiary question, but I insist that the amendment of the gentleman from Barbour was not

an incidental question, but was really the main question. It went to the main question. That rule only applies to incidental questions, and certainly cannot mean a question of this kind, which goes to the merits of the controversy. The question was whether you changed quadrennial to biennial, and to give that construction to the rule——

THE PRESIDENT—The gentleman rises to a question of inquiry and desires to have a ruling from the Chair?

MR. O'NEAL (Lauderdale)—Yes, sir; on that point.

THE PRESIDENT—The chair is of the contrary opinion. The question is on the motion to table the motion to reconsider.

Upon a vote being taken, a division was called for, when the chair was requested to state the question.

THE PRESIDENT—The Convention refused to adopt the amendment offered by the gentleman from Barbour. Thereupon the gentleman from Sumter moved to reconsider the vote whereby the Convention refused to adopt the amendment offered by the gentleman from Barbour, and thereupon he moved to lay that motion upon the table, and as many as favor tabling the motion to reconsider will please rise and remain standing until counted.

And by a vote of sixty-six ayes and forty-six noes, the motion to reconsider was laid on the table.

THE PRESIDENT—The question now recurs upon the section as amended and upon that the previous question has been ordered.

MR. WHITE—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. WHITE—That motion to table was not carried, because it takes a two-thirds vote.

THE PRESIDENT—The chair will state, in the opinion of the chair——

MR. WHITE—I was laboring under a misapprehension. I thought it was a motion to suspend the rules.

THE PRESIDENT—It was a motion to lay upon the table and a majority vote is sufficient.

MR. JONES (Montgomery)—I rise to a parliamentary inquiry. I called for the previous question on the two amendments, but the previous question, as I understand it, has never been called on the adoption of the section.

THE PRESIDENT—The previous question was ordered upon the adoption of the amendments and the section.

MR. JONES (Montgomery)—Who made the motion?

THE PRESIDENT—The gentleman from Sumter.

MR. JONES (Montgomery)—I hope the gentleman in charge of this won't choke us off in that way.

THE PRESIDENT—The question is not debatable, after the previous question has been ordered.

MR. JONES (Montgomery)—I am not debating it. I am simply making a parliamentary appeal to the gentleman on the other side not to choke us down.

MR. O'NEAL (Lauderdale)—I second that appeal.

THE PRESIDENT—The delegates will please take their seats—

MR. O'NEAL (Lauderdale)—I move to reconsider the vote by which the previous question was ordered.

THE PRESIDENT—The question is upon the adoption of the amendment as amended.

MR. JONES (Montgomery)—I move we adjourn.

THE PRESIDENT—The motion to reconsider is not in order where the previous question has been ordered. If the gentleman will refer to the rule on reconsideration, he will find that exception. Rule 27 provides, "When a vote has been passed except on the previous question, or on motion to lay on the table, a motion for reconsideration may be made." The question is upon the adoption of the section as amended and the previous question has been ordered.

Upon a vote being taken, the section was adopted.

MR. O'NEAL (Lauderdale)—I vote aye for the purpose of moving a reconsideration.

MR. JONES (Montgomery)—I voted aye, Mr. President, to move a reconsideration.

MR. SOLLIE—I voted aye for the purpose of moving a reconsideration tomorrow of the vote whereby this section was passed.

THE PRESIDENT—Two other gentlemen have given the same notice to the chair.

MR. JONES (Montgomery)—I move we adjourn.

MR. BURNS—A point of information.

THE PRESIDENT—The gentleman will state the question of inquiry.

MR. BURNS—I voted aye to adopt that section; can I make a motion to reconsider?

THE PRESIDENT—The gentleman can make his motion.

MR. BURNS—I give notice, then, perhaps I might do so. (Laughter).

THE PRESIDENT—The question is upon the motion of the gentleman from Montgomery that the Convention do now adjourn.

Upon a vote being taken, a division was called for, pending the announcement of the result of which leaves of absence were granted to Mr. Ledbetter for the 17th and 18th. Mr. Phillips for Wednesday and Thursday, and Mr. Henderson for Wednesday and Thursday.

By a vote of sixty-five ayes and fifty-one noes, the Convention thereupon adjourned.

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#### CORRECTIONS.

In proceedings of the forty-fifth day, the answer of Mr. Browne to the question of Mr. Gilmore as to whether he was not the attorney for the Columbiana people, should be as follows:

MR. BROWNE—Yes, but an attorney without a fee, and I have sworn to do everything in my power to relieve my home county in this matter. I am the kind of an attorney for the Columbiana people that before God in heaven I shall always be against the perpetration of a damnable fraud of any kind upon my native county, my friends and other citizens of the county that gave me birth. I am the attorney for Columbiana people but an attorney without a fee.

Mr. Barefield, in forty-fifth day's proceedings, voted no and not aye as reported, upon the motion of Mr. Browne to table the minority report on County and County Boundaries, relating to the Shelby County court house controversy.

## FORTY-SEVENTH DAY

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MONTGOMERY, ALA.,

Wednesday, July 17, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. C. B. McDaniel, as follows:

Almighty God, we have come in the name of Christ to give Thee praise for Thy tender care through the shades of the night. We bless Thee for the light of a new day. And as the sun scatters the darkness of the night, we pray that the Sun of Righteousness may arise with healing upon His wings and dispel all darkness and sin from our hearts. We beseech Thee, to set a watch over our lips that we speak no evil, our hearts that we think no guile, our hands that we do no evil deed, and our feet that we walk not in forbidden paths. We beseech Thee, to grant unto these, Thy servants, Thy heavenly blessing. The Lord bless the President of this Convention. We pray for our loved ones at home. We pray for the sick, the sad, the dying. We commend one another to Thy gentle protection. We commend unto Thee all men in authority and influential positions. We ask these blessings in the name and through the merits of our Lord and Saviour, Jesus Christ, Amen.

Upon the call of the roll 118 delegates responded to their names.

Leaves of absence were granted as follows: Mr. Carnathan, indefinite on account of sickness; Mr. Kyle for today; Mr. Graham (Montgomery) for today; Mr. Sanders (Limestone) Monday last and Tuesday morning; Mr. Bethune for Thursday, Friday and Saturday.

MR. CHAPMAN—I desire to have corrected the stenographic report of the yea and no vote on the motion of Mr. Rogers (Sumter) the reconsideration of the vote which had been taken. The stenographic report has me as absent or not voting. I was present and voted and the journal shows that I was present and voted. The stenographic report is incorrect. Mr. Rogers was occupying my seat and I occupying his seat, but I distinctly voted aye on that motion.

THE PRESIDENT—The journal is correct.

MR. CHAPMAN—Yes the journal is correct, but I want the stenographic report to be correct.

The Committee on Journal reported that they had examined the journal for the forty-sixth day and found the same to be correct. On motion the report of the Committee was adopted.

MR. JONES (Montgomery)—Is a motion now in order to reconsider the section on which the Convention acted just before we adjourned on yesterday. I think it is Section 5.

THE PRESIDENT—It would be in order at this time.

MR. JONES—I move to reconsider the vote by which Section 5 was passed.

THE PRESIDENT — The gentleman from Montgomery moves to reconsider the action of this Convention whereby Section 5 was adopted. I recognize the gentleman from Montgomery.

MR. JONES—Mr. President, I recognize that in a deliberative body like this there is a limit beyond which a minority should not press discussion, but that time comes only when there has been fair and reasonable opportunity for discussion. That opportunity has not been afforded us and some of the members on this floor desire to present the question again to the judgment of this Convention.

What is the proposition embodied in this 5th Section? For the first time in the history of Alabama, in the eighty-one years of its existence, it is asserted that the people of Alabama ought not to be trusted through their representatives to legislate oftener than once in four years. Stripped of all extraneous matter, the issue is that the people of Alabama cannot be trusted to legislate through their representatives, except once in every four years. I am not a blind adherent to precedent; I am not a blind worshipper of what other people do even under like circumstances as ours; but when we are asked to put this remarkable innovation in the Constitution, it is well to ask ourselves what does the rest of mankind do under like circumstances? I make bold to assert here this morning that there is not a civilized government, certainly not one whose people speak the English language, which refuses to allow its Legislature to meet except once in four years. Away back in the history of our institutions, during the time of Charles II, unbounded indignation flooded the English nation because the king undertook to keep Parliament out of session for several years. They passed an act that the Parliament should never be prolonged longer than three years at a time. That is the law of England today. Nobody thinks of changing it. In all the American States, every one of them—Mississippi not excluded—they have either annual or biennial sessions of the Legislature. Ought we not to pause, therefore, when we are asked for the first time in the eighty-one years of our history, to favor a position opposed to the practice of the whole civilized world. What argument can we give to the people

of Alabama in support of this section, when we go out to them and say it is our deliberate judgment, after shearing the Legislative power in local matters, in its power to tax, and after fixing many subjects upon which they shall not legislate, I say what reason can we give the people after doing that, in support of our position, that the people are unfit to legislate more than once in four years.

Mr. President, we have a great and a growing State, with diversified industries and pursuits. No man is wise enough to foretell what two years may bring forth. Yet we are putting in the Constitution which may last for half a century, that the General Assembly of Alabama, which in its last analysis is the closest representative of the people, shall not be in session but once in four years to look after their fiscal affairs or to legislate upon any other matters which may affect the honor, prosperity and welfare of the State. We have been here sixty days and it may be four months before we can lay down the principles which are embodied in a Constitution. Take the next session of the Legislature. It is true it is said they may sit there sixty days, but sixty days could be intelligently and profitably spent, and probably will be exhausted, if there is wise legislation in determining how you will protect local legislation in the matters which the Constitution says shall not be dealt with by special law, but which must be protected by general law. The subject was so complex that this Convention refused to go into detail, and said we commit that to the Legislature. What about matters of taxation? What about economic reforms? What about the penal system? What about labor laws? What about the regulation of the different businesses in this State?

A great deal has been said about the last Legislature. Perhaps it is deserving a great deal of the criticism which was passed upon it, but there were many good men in it, the majority of them were good men. I don't believe in the personnel there ever was a better Legislature. That there were some good men in it is evidenced by the fact that we have them here in this body. Now, if a good Legislature like that makes such mistakes as it did, do the friends of this measure want the people of Alabama in like cases in the future to be tied and bound for four years before they can meet and repeal their mistakes? It is said, Mr. President, that the Governor may call the Legislature together. Two things generally restrain the Governor in a matter of that sort; one is that the people are generally opposed to special sessions, and another one is that generally a Governor, where there is much contrariety of opinion on a public question, who calls the Legislature together to settle it, generally settles his own fate adversely to him. That is the history of special legislative sessions in the States at least, and the Governors will not call them if possible to avoid it. I beg our friends on the other side to remember the other day when some of us had what they considered the temerity to vote for a three-fourths

verdict by a jury, they filled this hall with protestations against the change in what was called the "blood bought rights." They spoke of Runnymede. They spoke of the habits of our people. They said for God's sake don't strike down that ancient and divine institution. Some of them went so far even as to intimate that gentlemen who thought as I did, and voted as I did, had a covert attack on corporations. That was an unjustifiable intimation. I don't think it affected the minds of anybody. If such insinuations arose in that case, I ask the gentleman who urged that argument, if the inquiry will not thrust itself forward in whose interest is it that the people of Alabama are to be forbidden to legislate oftener than once in four years?

Mr. President, I regard this as one of the most serious questions that has come before this Convention. You are going out to tell the people that they are not fit to be trusted with the legislative power as their ancestors have exercised it for eighty years in this State. Only the most powerful reasons will answer. You cling to the ancient landmarks in other things, why do you trample them down in this? A few words in conclusion. It pleased some of my friends yesterday in debate to hold me up as having based my arguments upon this great proposition upon an auxiliary or incidental statement that one of the uses of frequent elections was that it trained our young men in the duties of citizenship. There was not a member on the floor of this Convention who did not realize that that was simply one of the incidents that I mentioned as a reason why we should have frequent elections. I circulate somewhat among our people. I see all sorts and conditions of men. I have not found any general, all-pervading sentiment that you must get rid of legislation for four years. Sometimes a gentleman comes along, and says this will interfere with my business, "some fool will be tinkering with the usuary laws, some fool will be tinkering with a mining law, some fool will be tinkering with other business matters. I don't want the Legislature of Alabama to assemble again for years." Mr. President, that does not come from the people as such. Men get indignant and disgusted sometimes, and particularly at the Legislature, and sometimes a man says "I wish they would never meet again in one hundred years." That is not the deliberate sentiment of the people of Alabama. They want to have a voice in their own affairs oftener than once in four years. We have become a world power. Questions arise which agitate the country, and in which Alabama ought to have a voice, and that voice ought to be the voice of the people of Alabama; yet if this law passes and an inscrutable Providence were to deprive us of the two glorious old men who now represent the people in the United States Senate, the people could not make their voices heard, it may be for years, as to their successors. That is referred to the Governor who may not put a man in there whom the people wish, or whose views on public questions might be dif-



ferent to those held by a majority of the people. Let us be consistent then. If we are going to follow the "ancient land marks," if you are going to take the Constitution as it was except with a few changes, don't let us go out to the people of Alabama, with a declaration on the part of their representatives, that in our opinion, however much you limit the subjects of legislative power, that it is unwise and improper for the people to come into their own, but once in four years. If we cannot trust the Legislature to meet every two years, there is no institution in Alabama that we can look to for the preservation of our liberties and the elevation of our people. Republican government is a failure if our people are so incompetent and their Legislatures so worthless that we must say: "I will not let you legislate but once in four years, because you are not fit to be trusted with power oftener."

MR. O'NEAL (Lauderdale)—I don't feel, Mr. President, after the vote on yesterday, that anything I can say will change the opinion of this Convention, and it is only from an earnest sense of duty and from an earnest conviction that the minority were not accorded the rights which they were entitled to in this Convention that I rise to speak upon this provision. The distinguished gentleman from Sumter stated on yesterday that he knew the wishes of the people of Alabama, and that with one voice they were demanding this revolutionary change in our fundamental law. He stated that he had come in contact with them, and knew whereof he spoke. Mr. President, we of the minority are also representatives in this Convention, and we are vain enough to believe that we know the sentiments of the people we represent. I say to this Convention that there is no popular demand for this revolutionary procedure upon the part of the people of Alabama. It never was made the subject of discussion on the stump when the question of the calling of this Constitutional Convention was in issue. It ever has been made the topic of comment in the public press, and hereafter this Convention has assembled it suddenly dawns upon the minds of some of the members that the entire people of Alabama are clamoring for this change. What reasons are urged for it? Why, they say, the great State of Mississippi, the pioneer State only has a session every four years. Why the gentleman had not read the Constitution of Mississippi, or he could not have made such a statement. What does the Constitution of Mississippi say? It says the Legislature shall meet at the seat of government in regular session on the first Tuesday after the first Monday in January of the year 1892, and every four years thereafter, and in special session on the first Tuesday after the first Monday in January, 1894, and every four years thereafter, unless sooner convened by the Governor. The special sessions shall not continue longer than thirty days unless the Governor, deeming the public interests require it, shall call a sitting by proclamation in writing, and so on, and that at such special sessions the members

shall not receive more than ten cents, etc. What does that mean? It met in 1892 in general session, it met in 1894, it met in 1896, in 1898, and every two years thereafter. It means that every alternate year there is no limit upon the session of the Legislature; it can hold for a month, six months, or twelve months, every alternate year, but in every alternate year the session is limited to thirty days unless the Governor should deem it necessary to continue the session. Here is the Constitution of Louisiana, which requires biennial sessions, yet the people of Alabama are asked to embark in this new and untried experiment without a single experiment, without a single precedent in any State of this Union. What is the argument in favor of it? Why the distinguished gentleman from Sumter says it is expensive. Why, gentlemen of the Convention, that argument has no place in a body of this character, a body which has been characterized as the most distinguished that has assembled in this hall for 25 years. Are we to measure the liberties of the people by paltry dollars and cents? Have we become so sordid and mercenary that we are willing to strike down the safeguards of liberty because it is expensive? If such an argument can be used with force, why not strike down your jury system, and allow the judge to decide all the cases and save the expense? Why not burn down your court houses and turn over the administration of criminal law to Judge Lynch, because it is inexpensive? Ah, Mr. President, such an argument is the argument of the counting house, and the banking house, and has no place in a Constitutional Convention. Are we to estimate the liberties of the people by dollars and cents? What did the great empire of England do? A single English citizen had been imprisoned by the King of Abyssinia. His release was demanded and refused, and that great power spent millions of dollars, organized an army and kept in commission her navy to save one citizen of England! Did she stop at the paltry and mercenary arguments that are heard here in debate? It costs money to have a Legislature and a Governor. Why not abolish the Legislature and judiciary, and have a Governor-General in Alabama—it will be less expensive. Why not have a Governor-General clothed with executive and judiciary powers and save money and break down the liberties of the people. Ah, Mr. President that argument can be made to strike down one of the great co-ordinate branches of government that has existed since the formation of republican institution. Ah, but they say that the Legislature creates unrest and discord among the people and disturbs business. I have heard that stated before, but Mr. President is it not true that those who are disturbed and who are uneasy are sometimes officials who have been guilty of abuses which they feared might be corrected; isn't it sometimes the case that those who are uneasy and restless are wealthy corporations and individuals who have secured rights and privileges which they were not entitled to under the law? In whose interest then is this

proposed change? Is it in the interest of honest government, I ask the question? Have a meeting of the Legislature only once in four years and you open wide the flood gates of fraud and corruption. Our Legislature is a check upon dishonest officials, it is a check upon dishonest government. Why Mr. President, in this State we have practically only one great political party. We have not an active, aggressive, vigilant opposition party to keep us the majority in check, and the result is that the only remedy which the people have is a just and honest Legislature, fresh from the body of the people to correct abuses and evils that may exist in the administration of government. Your tax laws may require reform, are they to remain upon the books four years and not a man can touch them? Your appropriations may require change, may be declared unconstitutional, like the revenue law was, and you are without remedy and powerless. You say the Governor can call an extra session. How many extra sessions have been called in this State? Suppose you had had this four year term, this Convention would not be assembled here today, because over two years ago the Legislature was called in session and repealed the act calling this Convention and disregarded the will of the people. Two years afterwards the people rebuked them and sent a Legislature here that represented their wishes and called a Constitutional Convention, and yet if this had been the law upon the statute books, the people of Alabama would today be enduring all the evils of a corrupt and debauched suffrage without remedy for four years. Mr. President, suppose the people should demand relief from unjust, arbitrary and discriminating rates by the great railroad corporations of Alabama? You must wait four years for relief. That might be a pleasing—a soothing thought to these corporations, but I put it to you gentlemen when you go before the people of Alabama and tell them that you have prevented them from reforming abuse and evils in their laws, will they thank you with tears of joy and words of praise as stated by my distinguished friend from Sumter.

MR. GREER (Calhoun)—Don't you think since we have taken from the Legislature local legislation, that four years will be sufficient time in which to meet?

MR. O'NEAL—I am glad the gentleman made that suggestion. We have corrected the evils of local legislation Mr. President, and what would be the result. The result is we have elevated the tone and character of the legislature, we have enabled them to direct their attention and thoughts to the great matters of State, we open wide discussion and debate upon every great proposition that may be presented, every question of general importance will be subjected to the search light of a fair and full and open discussion, and the result will be that we will have no hasty and improvident legislation in this State. Why the Parliament of Great Britain

meets continuously for seven years—holds for seven years, and legislates for an empire that girdles the world, and yet although the session is unlimited it passes only a few hundred general laws, not as many as the Legislature of Alabama enacts. The Legislature of Kentucky is unlimited, as to the length of its session; the Legislature of Mississippi is also unlimited, and almost every State in the Union where the evils of local laws have been removed and improvident legislation prevented has no limit upon the time of its sessions.

MR. BROOKS—I want to call the gentleman's attention to this fact, isn't it true that in more than half the States of this Union the constitutions contain provisions exactly as we passed not long ago on the subject of local legislation, and that these States all have biennial sessions and biennial elections?

MR. O'NEAL—Every one of them. I say there is not a State in the American Union that has tried this unwise experiment that we are asked to embark upon at the dictates of the majority of this Convention. Now what does the great English Commentator say upon the subject speaking about biennial sessions, Mr. Butler says: "For a people claiming pre-eminence in the sphere of popular government, it seems hardly creditable that in their seeming despair of a cure for the chronic evils of legislation, they should be able to mitigate them only by making them intermittent." The Americans seem to reason thus: "Since a Legislature is very far gone from righteousness, and if its own nature inclined to do evil, the less chance it has of doing evil, the better. If it meets, it will pass bad laws. Let us therefore prevent it from meeting. They are no doubt right as practical men. They are consistent, as sons of the Puritans, in their application of the doctrine of original sin. But this is a rather pitiful result for self governing Democracy to have arrived at." Is it not a pitiful result for us, claiming to have the greatest and freest government on which the sun ever shone, to rise up here and say that we propose to strike down one of the great coordinate departments of government because it is evil and it will pass bad laws if it assembles? Why not do as this Commentator says. "Is there not a simpler remedy? Why all these efforts to deal with the various symptoms of the malady, instead of striking at the root of the malady itself? Why not reform the Legislatures, by inducing good men to enter them and keeping a more constant vigilant public opinion fixed upon them?" He says, under such a plan "Constitutional organs of government become constantly more discredited."

That is the effect of this proposed legislation, it discredits and brings into contempt the great constitutional organs of government, it creates the idea that the people of Alabama have despaired of good government and of an honest Legislature. Because the last Legislature was reckless and extravagant should we in a spasm

of virtue voice the sentiments of the distinguished gentleman from Sumter, and declare by our organic law that the Legislature shall not meet oftener than once in ten years. Why, gentlemen, when you adopted the article on local law, you remedied the evil and removed the dangers of inconsiderate and hasty legislation on general subjects. If you are afraid of hasty legislation, why not adopt the provision which is found in the Constitutions of twenty or thirty other States, which says no bill appropriating public money shall pass except by a two-thirds vote, or by another law which says a bill of any character shall pass except by a majority of the members elect in the Legislature. Then if you fear evil legislation, if you fear bad laws, put that check upon the Legislature, don't ask us to strike down this great bulwark of the people, the only organ by which their views can be expressed. Evils grow up in our convict system. Why, the other day I read an account which showed that in Alabama we are as barbarous as the Russians themselves in our treatment of these poor and helpless prisoners, yet the legislature cannot assemble to correct these evils, the Governor is powerless, we must wait four years, and the only argument that has been offered is that it is expensive. It is expensive to have a Supreme Court. I know an old country Justice of the Peace who said it was a great mistake to have a Supreme Court, that the Legislature of Alabama ought to abolish the Supreme Court and Circuit Court and let the Justice Court in each beat administer the law without appeal and save all the money of the courts and juries to the people, and the argument which has been made here is on no higher plane.

I have no doubt, Mr. President, that the distinguished gentleman from Sumter who seems to be leading this movement, is actuated by the highest and most patriotic motives. I have the greatest confidence in his ability, in his conservatism and in his devotion to the interests of our people; but I think he has got a fad in his head. He is asking us to do what no other civilized country, as the distinguished gentleman from Montgomery tells you, has done. The only argument which I have heard in favor of it was the simple one of dollars and cents. A percentum argument. Are we never going to rise above it, bonds, dollars and cents? As I heard the distinguished gentleman from Montgomery say the other day it seems to be all you could hear here in this convention. I believe in economy and I believe in saving money to the people, but I do not believe in that economy which would drag us to strike down and destroy one of the great coordinate branches of our government; and I tell you in my opinion, gentlemen of the Convention, when you go before the people of Alabama with this provision in your fundamental laws you will create a storm of opposition which will not down at your bidding. It may be pleasing to the vested interests, it may be pleasing to organized capital, and it may prevent the people from reaching and checking

the rapacity and greed of corporations, but I tell you it will not be received with favor, with tears of joy and rejoicing by the horny handed masses of this great commonwealth.

THE PRESIDENT—The gentleman from Sumter.

MR. SANFORD (Montgomery)—I am very glad I have an opportunity—

THE PRESIDENT—The gentleman is out of order.

MR. SANFORD—I want to ask a question, and I do it from self-respect. When I suggested to you that I wished to be recognized—

THE PRESIDENT—The gentleman is out of order and will please be seated.

MR. SANFORD—You asked me if it was to speak on the four years system and I said no.

THE PRESIDENT—The gentleman is out of order. The Chair will ask the gentleman to discontinue interrupting the Convention.

MR. ROGERS (Sumter)—Mr. Chairman and gentlemen of this Convention. Insinuations made by the gentleman from Lauderdale that this movement was made in the interest of organized capital probably emanates from a mind that would be governed by such motives as those—

MR. OATES—Will the gentleman permit an interruption?

MR. ROGERS (Sumter)—Certainly, sir, with the greatest of pleasure.

MR. OATES—I want to state there seems to be a misunderstanding; there were controversies in the committee, and it is not improper to relate, over this identical question and it was decided at one time one way the delegate from Jefferson, Mr. Lowe, leading in favor of biennial sessions. Mr. Rogers on the contrary at a subsequent meeting took the floor when the question was discussed and it was then decided as it has been reported here. There was no question as to any foreign matter brought in there at all except as to what would be the wisest and most expedient.

THE PRESIDENT—For what purpose does the gentleman rise?

MR. OATES—I merely interrupted him because I saw there there was a misunderstanding about what was really involved in this.

MR. ROGERS (Sumter)—The gentleman makes the point that our committee at a full meeting—with one or two members

absent—reported this article favorably. That is the point the Chairman makes.

Fortunately for me as the mover of this policy, I represent a county that is purely agricultural. There is but one line of railroad that goes through our county and therefore when men charge upon this floor that it is in the interest of organized capital, they charge something of which they are grossly ignorant. It is also fortunate, Mr. President and gentlemen of this Convention, that I am opposed by two men, one of whom is a leading attorney for a great railroad in the State of Alabama. It is seldom that I ever appear in the defense of the barefoot boy or the horny-handed son of toil. I think a man is not better for being a farmer, he is no better for being a merchant, but I hold that a man is entitled to consideration, not because of the vocation in which he makes his living, but because he is a man. I hold that a man can be as upright, just as honorable and just as true to his constituents as the representative of a railroad as he could as the follower of a mule. I hold that it is the man that gives dignity to the vocation and not the vocation that gives dignity to the man. I am here as I said upon yesterday representing the wishes of all classes of people in the State of Alabama, I do sincerely believe, except it be the patrons of the embryo legislators and the professional politicians. Gentlemen who will get up on this floor and advocate that the Legislature of the State of Alabama is a great place to train the young men to take part in the government of this State are not the proper sort to influence Legislatures about the policy of the government of the State of Alabama and a man who looks upon the Legislature of the State of Alabama as being merely a training school in which the young gladiators can come out and paw the air and saw the ears of the people in their utterances as to the principles of government, knows too little about it to be asking the people to follow him in a movement of this kind. This gentleman speaks about consistency. He was one of the men who advocated the three-fourths jury rule. That was a departure, sir, from all the precedents laid down in movements along that line and he gets up this morning and opposes this because it is an innovation. You can use that argument against any reform movement. The Jews used that argument against Christ and His doctrine, that it was a change and it was an innovation and the divine words of the Man of Gallilee when He expounded law to the fishermen on the shores of Gallilee, if this policy had been adopted would have been dead ashes upon the lips of the people. Now, Mr. President, we may go further back than this and say when Eve suggested to Adam after their downfall that you make clothing out of fig leaves he would say, "No, madam, this is an innovation," and we would be today naked savages hunting snakes for our dinner. That is no argument against a reform movement. I am speaking here in the

interest of the horny-handed sons of toil. They are the men who are not able to be here as representatives upon the floor of the Legislature to put through pet measures. There never has been a lobby here represented by the farmers of the State of Alabama and knowing this the horny-handed sons of toil of the State of Alabama ask us not to give the Legislature too much power to interfere with their business.

MR. WHITE—Will the gentleman permit an interruption?

MR. ROGERS (Sumter)—With the greatest of pleasure.

MR. WHITE—If that is correct we ought never to have another Legislature.

MR. ROGERS (Sumter)—The suggestion made comes from a mind that is unable to grasp the first rudiments of legislation. Suppose I were to say to a doctor, "I don't want you to give my child a whole bottle of quinine." Would he be fool enough to think that I objected to his giving my child the right sort of a dose?

Mr. President and gentlemen of this Convention, I believe the minds of the delegates upon this floor are made up. I believe that no man would allow himself to come here representing any constituent in the State of Alabama whose mind could be changed one way or the other by the winds of doctrines which may be put upon this floor by one advocate upon one side or the other. I believe the great bulk of the members on this floor have minds sufficient to grasp and analyze and pass upon any question intelligently without being urged on by anybody on this floor.

In the interest of the expedition of business, we come here one day and pass a section and the next day we come back here and reconsider it. This sort of thing ought to stop. We ought to go ahead with the business. We ought to go ahead and try and expedite the business here. The people of the State of Alabama are restless at our delay and therefore I say to you that when a vote is had as largely as was had on yesterday in favor or against a measure, we ought to frown down upon a proposition to reconsider because it takes up the time of this Convention.

One further argument, gentlemen of the Convention, and I am done. The gentleman here upon my right, the distinguished ex-Governor of the State of Alabama who is such a pleader here for consistency, comes and introduces an ordinance in here departing from all the systems which have been in the State of Alabama which permits an officer elected by the people of the county to be suspended by the Governor pending an impeachment, yet he comes in and says we cannot trust the Governor to do what is fair and right in calling the Legislature. Where is that sort of consistency? This same gentleman comes and says here, biennial



sessions of the Legislature ought to be permitted so that the people can be heard from, has come here and advocated upon this floor the election of the Governor for four years. In the name of God, if the people of Alabama ought to be heard on any proposition, they ought to be heard on that proposition as to who is going to represent them in their executive chair. We elect our Supreme Court Judges for four years, and we propose to elect them for eight years, which I think would be a good thing because men who sit upon these exalted positions should be removed from popular prejudice. They should be lifted above all considerations and be able to pass upon these things like it was said of Job of old, when he sat in the market place; "righteousness clothed him and justice was his robe and mantle." We are for trusting the people of the State of Alabama; and the gentlemen who advocate this other doctrine seem to think that the people of the State of Alabama have not got minds enough to know what they want for a period of four years. That is the argument. They say that the people of the State of Alabama are like the inhabitants of these little South American Republics down here, that they absolutely want to undo the things every two years that they have done two years before. I don't believe that way about the people of the State of Alabama. I know the people of the State of Alabama know their minds; and I know the people of the State of Alabama want this thing done in the interest of the stability of the law. It is barely fourteen months before we shall reconvene in the General Assembly, and yet the laws of the last General Assembly have not been printed and given to the public. In the name of God, how is a man like me who has never had the misfortune to be educated as a lawyer, going to find out the laws of the State of Alabama? I move to table the motion to reconsider made by the gentleman from Montgomery.

MR. SANFORD (Montgomery)—It is to suspend the power of the State of Alabama for four years.

THE PRESIDENT—The motion is to lay on the table.

MR. HEFLIN (Chambers)—I call for the ayes and noes.

The call was sustained by a requisite number rising, and the roll call resulted as follows.

#### AYES.

Messrs. President,	Coleman, of Greene,	Glover,
Barefield,	Craig,	Graham, of Talladega,
Bethune,	Davis, of DeKalb,	Greer, of Calhoun,
Blackwell,	Eley,	Hodges,
Boone,	Espy,	Pillans,
Browne,	Ferguson,	Howze,
Burnett,	Fitts,	Inge,
Case,	Fletcher,	Jones, of Hale,
Chapman,	Gilmore,	Jones, of Wilcox,

Kirk,  
Kirkland,  
Locklin,  
Macdonald,  
McMillan, of Baldwin,  
McMillan (Wilcox),  
Malone,  
Maxwell,  
Miller (Marengo),  
Miller (Wilcox),  
Murphree,  
NeSmith,  
Norman,  
Norwood,

Total—67.

Oates,  
O'Rear,  
Pearce,  
Pettus,  
Pitts,  
Porter,  
Renfro,  
Reynolds (Chilton),  
Rogers (Sumter),  
Sanders,  
Searcy,  
Sentell,  
Sloan,  
Smith, Mac. A.,

Smith, Morgan M.,  
Sorrell,  
Spragins,  
Stewart,  
Stoddard,  
Tayloe,  
Vaughan,  
Waddell,  
Walker,  
Weatherly,  
Whiteside,  
Williams (Marengo),

### NOES.

Banks,  
Bartlett,  
Beddow,  
Brooks,  
Bulger,  
Burns,  
Byars,  
Cardon,  
Carmichael, of Colbert,  
Cobb,  
Davis, of Etowah,  
Duke,  
Foshee,  
Foster,  
Freeman,  
Grayson,  
Haley,  
Handley,  
Harrison,

Total—55.

Heilin, of Chambers,  
Heflin, of Randolph,  
Hinson,  
Hood,  
Howell,  
Jackson,  
Jones, of Bibb,  
Jones, of Montgomery,  
Knight,  
Leigh,  
Lomax,  
Long, of Walker,  
Lowe, of Jefferson,  
Martin,  
Moody,  
O'Neal (Lauderdale),  
O'Neill, of Jefferson,  
Opp,  
Palmer,

Parker (Elmore),  
Proctor,  
Robinson,  
Rogers (Lowndes),  
Sanford,  
Selheimer,  
Smith (Mobile),  
Sollie,  
Spears,  
Thompson,  
Watts,  
Weakley,  
Willet,  
Williams (Barbour),  
Wilson (Clarke),  
Wilson (Wash'gton),  
Winn,

### ABSENT OR NOT VOTING.

Almon,  
Altman,  
Ashcraft,  
Beavers,  
Carmichael, of Coffee,  
Carnathon,  
Cofer,  
Coleman, of Walker,  
Cornwall,  
Cunningham,  
Dent,

deGraffenreid,  
Eyster,  
Graham, of Montgomery,  
Grant,  
Greer, of Perry,  
Henderson,  
Jenkins,  
King,  
Kyle,  
Ledbetter,  
Long, of Butler,

Lowe, of Lawrence,  
Merrill,  
Morrisette,  
Mulkey,  
Parker (Cullman),  
Phillips,  
Reese,  
Reynolds, of Henry,  
Samford,  
White,  
Williams (Elmore).

So the motion to table the motion to reconsider was lost.

During the roll call:—

MR. OATES—I am paired with the delegate from Butler, Mr. Long; and if he were present he would vote no and I would vote aye.

MR. SANFORD—I am paired with some gentleman on that proposition, but I have forgotten who it is, and I therefore ask to be allowed not to vote at all.

MR. SANFORD (Montgomery)—As I am against the suspension of the legislative power of the people for four years, I shall vote no.

After the roll call:—

MR. WHITE—I want to announce that I was paired with my colleague from Jefferson, Mr. Cornwell, who would have voted aye and I no. I overlooked it at the time the roll was called.

MR. OATES—I am informed that I was mistaken in regard to the way the delegate from Butler would vote if he were present; that he would vote the same way that I have voted, aye.

THE PRESIDENT—The Secretary will call the roll of delegates.

MR. SANFORD (Montgomery)—As under the rules I was not permitted to argue this question—to be allowed to put in the stenographic report what I would have said if I had been given an opportunity—

MR. ROGERS (Sumter)—I move that permission be given him to print his remarks in the stenographic report.

Upon a vote being taken, permission was granted.

MR. BEDDOW—I rise to a question of personal privilege. In The Montgomery Advertiser this morning it is reported that I appealed from a decision of the President of this Convention. Among other things, it says President Knox ruled that the point of order was not well taken, and Mr. Beddow appealed from the decision of the chair. I desire to say that at no time during the session of this Convention have I appealed from the ruling of the President. That so far as I am concerned, the relations between myself and the President have been most pleasant, so much so that I have always been willing to sustain the President in his ruling. When the Committee on Schedule, Printing and Incidental Expenses made a report on a resolution that I had introduced and the passage of which I had at heart, because it came from those who elected and sent me to this Convention and was sustained by 25,000 voters of the State of Alabama and that resolution was placed

upon the calendar but my motion that the resolution be taken up and put upon its passage was ignored. I acquiesced in that ruling of the President, but on yesterday, while the gentleman from Chambers (Judge Robinson) was in the Chair, a committee made a report. In order to sustain the President I raised the point of order that that should take the same course that my resolution had taken and in overruling the point of order the ruling of the President was reversed. My intention in making the point of order was to sustain the ruling of the President of this Convention and I desire to ask that the Montgomery Advertiser to do me the courtesy of saying I did not appeal from the President of the Convention.

THE PRESIDENT—The stenographer will note the gentleman's statement.

Mr. Blackwell yielded his turn to Mr. Williams of Marengo.

Resolution No. 249, by Mr. Williams of Marengo.

Be it resolved, that, on motions to reconsider, twenty minutes and no more, shall be allowed to each side for speech-making, and thereupon a vote shall be taken.

Referred to Committee on Rules.

The Clerk then read the following resolution:

Resolution No. 250, by Mr. Burns:

Resolved, That no delegate shall, at the close of his remarks or speech make a motion to lay on the table, or call for the previous question.

Referred to Committee on Rules.

The Clerk will call the roll of standing Committees.

The roll of the Committees was called and when the Committee on Schedule, Printing and Incidental Expenses was reached Mr. Heflin of Randolph, called up the report of that Committee which had heretofore been placed on the calendar.

The report was read as follows:

Report of the Committee on Schedule, Printing and Incidental Expenses.

Mr. President:

The Committee on Schedule, Printing and Incidental Expenses have instructed me to make the following partial report, viz:

The Committee has audited the accounts hereto attached and find that the State of Alabama is indebted to the Brown Printing Co., of Montgomery, Alabama, in the sum of \$176.90.

We find that the said State is indebted to J. W. Terry, of Montgomery, Alabama, for the use of a typewriter from May 24th to June 24th, in the sum of \$5.

We find that the said State is indebted to Ed C. Fowler Co., of Montgomery, Alabama, in the sum of \$8.60.

We find that the said State is indebted to J. W. Terry, of Montgomery, Alabama, in the sum of \$16 for services rendered Rules Committee up to May 27th, 1901.

We find that the said State is indebted to W. W. Haygood, of Montgomery, Alabama, in the sum of \$1.25.

We find that the said State is indebted to Miss Eunice Richards for typewriting done for the Committee on Preamble and Declaration of Rights, in the sum of \$7.50.

We find that the said State is indebted to Marshall & Bruce Co., of Nashville, Tennessee, in the sum of \$48.25.

We find that said State is indebted to Ed. C. Fowler Co., of Montgomery, Alabama, in the sum of \$4.75.

We find that the said State is indebted to Jos. E. Longstreet, in the sum of \$8 for services rendered to the Committee on Suffrage and Elections, in making fifty-four copies of the Report of said Committee.

We find that said State is indebted to Miss Georgia Connelly in the sum of \$6 for stenographic work done for Committee on Suffrage and Elections.

All of the above amounts are for printing done, for articles furnished State of Alabama for use of Constitutional Convention, and for services rendered to Committees of said Convention and all of the above amounts are itemized as shown by bills hereto attached. Total amount, \$282.25, and we recommend the payment of the same. All of which is respectfully submitted.

Jno. T. Heflin, Chairman.

Committee on Schedule, Printing and Incidental Expenses.

MR. HEFLIN (Randolph)—I now move that the report of the Committee on Schedule, Printing and Incidental Expenses be adopted and that the President of this Convention be authorized to draw his warrant on the State Treasurer in favor of the parties named in said report for the amount due them.

Upon a vote being taken the report was adopted.

MR. SMITH (Mobile)—I desire to ask unanimous consent to make the report of the Judiciary Committee.

The consent was given and the report of the Judiciary Committee and the various minority reports were read as follows:

#### REPORT OF THE COMMITTEE ON JUDICIARY

The Committee on Judiciary has carefully considered and discussed all of the provisions of Article VI, of the Constitution of 1875 relating to the Judicial Department of the State, together with the several ordinances relating to that department, and instructs me to report to the Convention and recommend the adoption of the subjoined Article.

No radical departure has been made from the judicial system of the State as established by the Constitution of 1875, but the Article has been so written as to give more elasticity to the judicial system of the State, so as to enable the Legislature to extend or modify the system, from time to time, as may be necessary to meet the needs of the State as its wealth and population increase, and to make a more economic and systematic arrangement of the system.

The Article reported does not change the jurisdiction of the Supreme Court, nor create any other court of final resort, but makes it possible for the Legislature to create an Inferior Appellate Court, to relieve the Supreme Court of any excess of labor that may be placed upon it, should the increasing litigation of the State hereafter require it.

The common law and chancery jurisdictions as separate and distinct systems are retained, and no change whatever is made in the practice under these separate and distinct systems; but the Legislature is authorized to confer both jurisdictions upon the Circuit or Chancery Courts or upon such inferior courts as the Legislature may from time to time create, so as to enable the Legislature, if it shall become necessary for the convenience of business, to provide for the holding of courts more frequently in the various counties of the State, with but little, if any, additional expense to the State.

With the same view, the limitations upon the number of the circuit and chancery divisions into which the State is divided have been removed, and, in lieu thereof, it has been provided that no circuit or chancery division shall contain less than three counties, unless there be embraced therein a county having a population exceeding 20,000 and taxable property exceeding \$3,500,000 in value, and that such counties need not be included in any circuit or chancery division unless the value of its taxable property or its population shall be reduced below such limits. In the opinion of the Committee it is probable that many of such counties will be able to maintain inferior courts with a common law and equity jurisdiction, and the purpose of the Committee is to enable the

Legislature to give to such counties separate courts to attend to their business, when the litigation of such counties will justify it, and make such inferior courts take the place of both the Circuit and Chancery Courts in the counties in which they shall be established.

The system of Probate Courts and their jurisdiction is left wholly unchanged; but it is provided that whenever any court having equity powers has taken jurisdiction of the settlement of any estate, such court shall have the power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians and trustees, and including action upon the resignation of either of them.

The Article reported makes no change in the office or jurisdiction of Justices of the Peace, but provides that the Legislature may create Inferior courts, with the jurisdiction of a Justice of the Peace, for any precinct or precincts lying within or partly within any incorporated town or city having a population of more than 2,500 inhabitants, to supersede and take the place of all Justices of the Peace in such precincts, whenever such course may be deemed by the General Assembly to be wise, and further provides that the Governor except where otherwise provided by the General Assembly, shall have power to appoint one Notary Public with the jurisdiction of a Justice of the Peace in each precinct in which the election of Justices of the Peace shall be authorized.

The Article as rewritten makes no change in the terms of office of Chancellors, Circuit Judges and Judges of Probate, but provides that, in case of a vacancy in the office, the Governor shall fill such vacancy by appointment, and that such appointee shall hold office until the next general election held at least six months after the vacancy occurs, and until a successor is elected and qualified, and, further, that whenever any new circuit or chancery division is created, the Judges or Chancellor thereof shall be elected at the next election for representatives to the General Assembly, for a term to expire at the next general election for Judges and Chancellors, provided that if such new circuit or chancery division is created more than six months before the next election of Representatives to the General Assembly, the Governor shall appoint some one as Judge or Chancellor, as the case may be, to hold office until such election.

The Article as reported allows the General Assembly to provide the method of election or appointment of the judges of such inferior courts as may be created.

The Article reported provides for the election of Chief Justices and Associate Justices of the Supreme Court at the time and place fixed by law for the election of members of the House of

Representatives of the Congress of the United States until the General Assembly shall, by law, change the time for holding such election; it provides that the term of the Chief Justice who shall be elected in 1904 shall be six years, and that two of the Associate Justices to be elected in 1904 shall hold office until 1906, and that the remaining two Associate Justices elected in 1904 shall hold office until 1908, and that the Associate Justices elected in 1904 shall draw or cast lots among themselves to determine which of them shall hold office for the terms ending, respectively, in 1906 and 1908, and that the successors of the Chief Justice and Associate Justices elected in 1904, and all Chief Justices and Associate Justices thereafter elected, shall hold office for a term of six years, and that in the event of an increase or reduction in the number of Associate Justices of the Supreme Court, the General Assembly shall provide, as nearly as may be, for the election each second year of one-third of the number of such Justices.

Solicitors are made elective by the people of the several territorial subdivisions of the State in which they are to serve.

In all other material respects the provisions of the Constitution of 1875 remain unchanged.

A majority of the Committee have voted in favor of each Section of the Article as reported, but several members of the Committee did not give their assent to certain of such sections, nor do they hold themselves bound to support, in the Convention, each of the sections that have been reported by the Committee: several of them have prepared minority reports applying to one or more of the sections reported by the Committee, which are herewith presented to the Convention.

Gregory L. Smith,

Chairman of Judiciary Committee.

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## JUDICIAL DEPARTMENT

Section 1. The judicial powers of the State shall be vested in the Senate, sitting as a court of impeachment, a Supreme Court, Circuit Courts, Chancery Courts, Courts of Probate, such courts of law and equity inferior to the Supreme Court, and to consist of not more than five members, as the General Assembly from time to time may establish, and such persons as may be by law invested with powers of a judicial nature; but no court of general jurisdiction, at law or in equity, or both, shall hereafter be established in and for any one county having a population of less than twenty thousand or property assessed for taxation at a less valuation than three millions five hundred thousand dollars.



Sec. 2. Except in cases otherwise directed in this Constitution, the Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law, except where jurisdiction over appeals is vested in some inferior court, and made final therein; provided, that the Supreme Court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

Sec. 3. The Supreme Court shall be held at the seat of government, but if that shall become dangerous from any cause, it may adjourn to another place.

Sec. 4. Except as otherwise authorized in this Article, the State shall be divided into convenient circuits. For each Circuit there shall be chosen a Judge, who shall, for one year next preceding his election and during his continuance in office, reside in the circuit for which he is elected.

Sec. 5. The Circuit Court shall have original jurisdiction in all matters civil and criminal within the State not otherwise excepted in this Constitution; but in civil cases, other than suits for libel, slander, assault and batter and ejectment, it shall have jurisdiction only where the matter or sum in controversy exceeds fifty dollars.

Sec. 6. A Circuit Court, or a court having the jurisdiction of the Circuit Court, shall be held in each county in the State at least twice in every years, and the Judges of the several courts mentioned in this section may hold court for each other when they deem it expedient, and shall do so when directed by law. The Judges of the several courts mentioned in this section shall have power to issue writs of injunction, returnable in the Courts of Chancery, or courts having the jurisdiction of Courts of Chancery.

Sec. 7. The General Assembly shall have power to establish a court or courts of Chancery, with original and appellate jurisdiction, except as otherwise authorized in this Article. The State shall be divided by the General Assembly into convenient chancery divisions; each division shall be divided into districts, and for each division there shall be a Chancellor, who shall have resided for one year next preceding his election or appointment, and, at the time of his election or appointment and during his continuance in office, in the division for which he shall be elected or appointed.

Sec. 8. A Chancery Court, or a court having the jurisdiction of the Chancery Court, shall be held in each district, at a place to be fixed by law, at least twice in each year, and the Chancellors may hold court for each other when they deem it necessary.

Sec. 9. Any county having a population exceeding twenty thousand, according to the next preceding Federal census, and also taxable property exceeding three million five hundred thousand dollars in value, according to the next preceding assessment of property for State and county taxation, need not be included in any circuit or chancery division; but if the value of its taxable property shall be reduced below that limit or if its population shall be reduced below that number, the General Assembly shall include such county in a circuit and chancery division or either, embracing more than one county.

No circuit or chancery division shall contain less than three counties, unless there be embraced therein a county having a population exceeding twenty thousand and taxable property exceeding three million five hundred thousand dollars. The General Assembly may confer upon the Circuit Court or the Chancery Court the jurisdiction of both of said courts. In counties having two or more courts of record, the General Assembly may provide for the consolidation of all or any of such courts of record, except the Probate Court, with or without separate divisions, and an appropriate number of judges for the transaction of the business of such consolidated court.

Sec. 10. The General Assembly shall have power to establish in each county within the State a Court of Probate, with general jurisdiction to grant letters testamentary and of administration, and of orphans' business; provided, that whenever any court having equity powers has taken jurisdiction of the settlement of any estate it shall have power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians and trustees, and including action upon the resignation of either of them.

Sec. 1. The Justices of the Supreme Court, Chancellors, and the Judges of the Circuit Courts, and other courts of record, except Probate Courts, shall, at stated times receive for their services a compensation which shall not be diminished during their official term; they shall receive no fees or perquisites, nor hold any office (except judicial offices) of profit or trust under this State or the United States, or any other power, during the term for which they have been elected.

Sec. 12. The Supreme Court shall consist of one Chief Justice and such number of Associate Justices as may be prescribed by law.

Sec. 13. The Chief Justice and Associate Justices of the Supreme Court, Judges of the Circuit Courts, Probate Courts and Chancellors, shall be elected by the qualified electors of the State, circuits, counties and chancery divisions for which such courts may

be established, at such times as may be prescribed by law, except as herein otherwise provided.

**Sec. 14.** The Judges of such inferior courts of law and equity as may be by law established, shall be elected or appointed in such mode as the General Assembly may prescribe.

**Sec. 15.** Chancellors and Judges of all courts of record, shall have been citizens of the United States and of this State for five years next preceding their election or appointment, and shall be not less than twenty-five years of age, and, except Judges of Probate Courts, shall be learned in the law.

**Sec. 16.** Except as otherwise provided in this article, the Chief Justice and Associate Justices of the Supreme Court, Circuit Judges, Chancellors and Judges of Probate, shall hold office for the term of six years and until their successors are elected or appointed and qualified; and the right of such Judges and Chancellors to hold their offices for the full term hereby prescribed shall not be affected by any change hereafter made by law in any circuit, division, or county, in the mode or time of election.

**Sec. 17.** The Chief Justice and Associate Justices of the Supreme Court shall be chosen at an election held at the time and places fixed by law for the election of members of the House of Representatives of the Congress of the United States, until the General Assembly shall, by law, change the time of holding such election. The term of office of the Chief Justice who shall be elected in the year 1904 shall be as provided in the last preceding section. The successors of two of the Associate Justices elected in 1904, shall be elected in the year 1906, and the successors of the other two Associate Justices elected in 1904, shall be elected in the year 1908. The Associate Justices of said court elected in the year 1904 shall draw or cast lots among themselves to determine which of them shall hold office for the terms ending, respectively, in the years 1906 and 1908, and until their respective successors are elected or appointed and qualified. The result of such determination shall be certified to the Governor, by such Associate Justices, or a majority of them prior to the first day of January, 1905, and such certificates shall be entered upon the minutes of the court. In the event of the failure of said Associate Justices to make and certify such determination, the Governor shall designate the terms for which they shall respectively hold office, as above provided, and shall issue his proclamation accordingly. In the event of an increase or reduction by law of the number of Associate Justices of the Supreme Court, the General Assembly shall, as nearly as may be, provide for the election, each second year, of one-third of the members of said court.

**Sec. 18.** All judicial officers within their respective jurisdiction shall, by virtue of their offices, be conservators of the peace.

Sec. 19. Vacancies in the office of any of the judges who hold office by election, or chancellors of this State shall be filled by appointment by the Governor; such appointee shall hold his office until the next general election held at least six months after the vacancy occurs, and until his successor is elected and qualified; the successor chosen at such election shall hold office for the unexpired term and until his successor is elected and qualified.

Sec. 20. Whenever any new circuit or chancery division, is created, the judge or chancellor therefor shall be elected at the next election for representatives to the General Assembly for a term to expire at the next general election for judges and chancellors; provided that, if said new circuit or chancery division is created more than six months before the next election of representatives to the General Assembly, the Governor shall appoint some one as judge or chancellor, as the case may be, to hold the office until such election.

Sec. 21. If in any case, civil or criminal, pending in any circuit court, chancery court, or either of them in this State, the presiding judge or chancellor shall, for any legal cause, be incompetent to try, hear or render judgment in such case, the parties, or their attorneys of record, if it be a civil case or the solicitor or prosecuting officer, and the defendant or defendants, if it be a criminal case, may agree upon some disinterested person, practicing in the court and learned in the law, to act as special judge or chancellor to sit as a court, and to hear, decide and render judgment in the same manner and to the same effect as a chancellor or as a judge of the circuit court, or if a court having the jurisdiction of a circuit and chancery court, or either, sitting as a court might do in such case. If the case be a civil one and the parties or their attorneys of record do not agree; or if it be a criminal one and the prosecuting officer and the defendant or defendants do not agree upon a special judge or chancellor, or if either party in a civil cause is not represented in court, the register in chancery or the clerk of such circuit or other court, in which said cause is pending, shall appoint a special judge or chancellor, who shall preside, try, and render judgment as in this section provided. The General Assembly may prescribe other methods for supplying special judges in such cases.

Sec. 22. The General Assembly shall have power to provide for the holding of chancery and circuit courts, and for the holding of courts having the jurisdiction of circuit and chancery courts, or either of them, when the chancellors or judges thereof fail to attend regular terms.

Sec. 23. No judge of any court of record in this State, shall practice law in any of the courts of this State, or of the United States.

Sec. 24. Registers in chancery shall be appointed by the chancellors of the respective divisions, and shall have been at least twelve months before their appointment, and shall be at the time of their appointment and during their continuance in office, resident citizens of the district for which they are appointed. They shall hold office for the term for which the chancellor making such appointment was elected or appointed. Such registers shall receive as compensation for their services only such fees and commissions as may be specifically prescribed by law, which fees shall be uniform throughout the State.

Sec. 25. The clerk of the Supreme Court shall be appointed by the Judges thereof, and shall hold office for the term of six years, and the clerks of such inferior courts as may be established by law shall be elected in such manner as the General Assembly may provide.

Sec. 26. Clerks of the circuit court shall be elected by the qualified electors in each county for the term of six years, and may, when appointed by the chancellor, also fill the office of register in chancery. Vacancies in such office of clerk shall be filled by the Governor for the unexpired term.

Sec. 27. The clerk of the Supreme Court and registers in chancery may be removed from office by the Justices of the Supreme Court, and by the chancellors, respectively, for cause, to be entered at length upon the minutes of the court.

Sec. 28. A solicitor for each judicial circuit, or other territorial subdivision prescribed by the General Assembly, shall be elected by the qualified electors of such circuit or other territorial subdivision, who shall be learned in the law, and who shall, at the time of his election, and during his continuance in office, reside in the circuit or other territorial subdivision, for which he is elected, and whose term of office shall be for four years; provided, that this Article shall not operate to abridge the term of any solicitor now in office; and, provided, further, that the solicitors elected in the year 1904 shall hold office for six years and until their successors are elected and qualified.

Sec. 29. In each precinct not lying within, or partly within, any city or incorporated town of more than twenty-five hundred inhabitants, there shall be elected, by the qualified electors of such precinct not exceeding two justices of the peace and one constable. Where one or more precincts lie within, or partly within, a city or incorporated town having more than twenty-five hundred inhabitants, the General Assembly may provide by law for the election of not more than two justices of the peace and one constable, for each of such precincts, or an inferior court for such precinct or precincts, in lieu of all justices of the peace therein. Justices of the peace, and the inferior courts herein provided for, shall

have jurisdiction in all civil cases where the amount in controversy does not exceed one hundred dollars, except in cases of libel, slander, assault and battery and ejectment. The General Assembly may provide by law what fees may be charged by Justices of the Peace and Constables, which fees shall be uniform throughout the State. The right of appeal from any judgment of a Justice of the Peace, or from any inferior court authorized by this section, without the prepayment of costs, and also in the term of office of such Justices, and of the Judges of such inferior courts, and of notaries public, shall be provided for by law. The Governor may appoint notaries public without the powers of a Justice of the Peace, and may, except where otherwise provided by an act of the General Assembly, appoint not more than one notary public with all of the powers and jurisdiction of a Justice of the Peace for each precinct in which the election of Justices of the Peace shall be authorized.

Sec. 30. The Attorney General shall be elected by the qualified electors of the State at the same time and places of election of members of the General Assembly, whose term of office shall be for four years and until his successor is elected and qualified. After his election, he shall reside at the seat of government, shall be the law officer of the State, and shall perform such duties as may be required of him by law.

Sec. 31. The style of all process shall be "The State of Alabama" and all prosecutions shall be carried on in the name and by the authority of the same, and shall conclude "Against the Peace and Dignity of the State."

#### MINORITY REPORTS

Mr. President:

The undersigned members of the Committee on Judiciary do not concur in the majority report so far as it refers to Sections 25 and 27 of the article reported, and they recommend the adoption of the following sections in lieu of said Sections 25 and 27, respectively:

Sec. 25. The Clerk of the Supreme Court shall be elected by the qualified electors of the State for a term of six years. Any vacancy in the office of such Clerk shall be filled by appointment by the Justices of the Supreme Court for the unexpired term. Said Clerk shall not, after the expiration of the term of the Clerk now in office, receive to his use any fees, costs perquisites of office or compensation other than a salary to be prescribed by law, which shall not be diminished during his official term.

Sec. 2. Registers in Chancery may be removed from office by the Chancellors, respectively, for cause, to be entered at length upon the minutes of the court.

R. W. Walker,  
O. R. Hood,  
J. M. Jones,  
W. H. Tayloe,  
John A. Davis,  
William C. Fitts,  
John T. Ashcraft,  
Norville R Leigh, Jr.,  
E. W. Coleman,  
J. T. Kirk.

#### MINORITY REPORT JUDICIARY COMMITTEE

The undersigned member of the committee differs from the majority as to Section 29 of said report and would suggest the following change in the last paragraph of the section:

“Strike out the word ‘except’ and strike out the word ‘otherwise’ in the last paragraph of Section 29.

J. McLean Jones.

Mr. President.

The undersigned member of the Committee on Judiciary does not concur in the report of the majority of the committee in recommending the adoption of Sections 2 and 9 of said report.

I object to the adoption of Section 2 of said report for the reason it empowers the General Assembly to create an intermediate Court of Appeal, which in my judgment is unwise. The object of the majority of the committee is to furnish relief to the Supreme Court. The relief needed can be furnished when necessary by increasing the number of Associate Justices. I object to the creation of said court for the further reason there will be irreconcilable conflict in the decisions of this and the Supreme Court which would render the law uncertain on many questions to the great annoyance of the people. The expense of sustaining the court will, in my judgment, cost the State about \$15,000 per annum. The addition of two Associate Justices to the Supreme Court will not cost more than half of that amount. I therefore offer as a substitute for Section 2 the following:

Sec. 2. Except in cases otherwise directed in this Constitution, the Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restric-

tions and regulations not repugnant to this Constitution as may from time to time be prescribed by law; provided, the Supreme Court shall have power to issue writs of injunction, habeas corpus, quo warranto and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdiction.

I object to the adoption of Section 9 as reported by the committee:

First, this section provides for the establishment of too many Circuit Courts and courts with circuit and chancery jurisdiction. Under the report of the committee, the General Assembly is authorized to establish at the cost of the State, a court in nineteen counties with Circuit and Chancery Court jurisdiction, which with the 13 Circuit Courts and five Chancery Courts as now exists will make 37 courts to do the work that is now being done by 13 Circuit Judges and 5 Chancellors. I further object to Section 9 as reported by the committee for the reason it authorizes the General Assembly to abolish the Court of Chancery. The system of separate Chancery Courts has been too long a part of the judicial system of this State to be abolished. I therefore offer as a substitute for Section 9 as reported by the Committee the following:

Sec. 9. Any county having a population exceeding 30,000 according to the next preceding Federal census, and also taxable property exceeding \$7,000,000 in value according to the next preceding assessment of property for State and county taxation need not be included in any circuit or chancery division, but if the value of the taxable property shall be reduced below that limit, or its population shall be reduced below that number in either of which events the General Assembly shall include such county in a circuit or chancery division or either, embracing more than one county. No circuit or chancery division shall contain less than three counties, unless there be embraced therein a county having a population exceeding 30,000, and taxable property exceeding \$7,000,000. The counties of this State not having a population of \$30,000 and taxable property of \$7,000,000 or more shall be divided into convenient circuits by the General Assembly at its first session after the adoption of this Constitution, and when so divided the number of circuits shall not be increased except by a vote of two-thirds of the General Assembly.

J. T. Kirk.

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Mr. President:

We, the undersigned members of the Judiciary Committee, believing that biennial elections should be dispensed with, and that only one election in every four years should be held for the selec-



tion of State and county officers, do not concur in the report of the Committee as to Sections 16, 17 and 26.

Therefore, we move as a substitute for Section 16 the following:

Sec. 16. Except as otherwise provided in this Article, the Chief Justice and Associate Justices of the Supreme Court shall hold office for the term of eight years, and until their successors are elected and qualified. Circuit Judges, Chancellors and Judges of Probate shall hold office for a term of four years, except as otherwise provided in this Article, and until their successors are elected or appointed and qualified; Provided, that this Section shall not operate to abridge the term of any Justice of the Supreme Court, Judge, Chancellor or Judge of Probate now in office; and provided, further, that the Justices of the Supreme Court, Judges, Chancellors and Judges of Probate elected in 1904, shall hold office for the term of six years, and until their successors are elected and qualified.

We move as a substitute for Section 17 the following:

Sec. 17. The Chief Justice and Associate Justice of the Supreme Court shall be chosen at an election held for the election of members of the Legislature in the year 1910. The term of the office of the Chief Justice who shall be elected in 1910 shall be as prescribed in the preceding Section. As nearly as possible, one-half of the Associate Justices elected in 1910 shall hold office for the term of four years and until their successors are elected and qualified; and the remainder for the term of eight years, and until their successors are elected and qualified. The Associate Justices elected in 1910 shall determine by lot among themselves which of them shall hold office for the term ending 1914 and 1918, respectively, the result when so determined to be certified to the Governor by such Associate Justices or a majority of them, and also to be entered upon the minutes of the Court. In the event of the failure of such Associate Justices to make and certify such determination, the Governor shall designate the term for which they shall hold office respectively, as above provided, and shall issue his proclamation accordingly.

We move to amend as a substitute for Section 26 the following:

Sec. 26. A Clerk of the Circuit Court shall be elected by the qualified electors in each county for the term of four years, and may, when appointed by Chancellor, also hold the office of Register in Chancery. Vacancies in such office of Clerk shall be filled by appointment by the Governor. But nothing in this Section shall operate to abridge the term of any clerk now in office; and

clerks elected in the year 1904 shall hold office for the term of six years, and until their successors are elected and qualified.

C. C. NeSmith,  
Wm. C. Fitts,  
J. B. Duke.

Mr. President:

The undersigned, a minority of the Judiciary Committee, do not concur in the report of the Committee as to the manner of electing Solicitors by a vote of the people. For reasons that will be made manifest in argument on the floor of the **Convention**, we, the minority of said Committee, submit the following ordinance in lieu of the report of the Committee:

Be it ordained, etc.:

"Sec. 28. A Solicitor for each Judicial Circuit or other territorial subdivision prescribed by the Legislature shall be elected by joint ballot of the Legislature, who shall, at the time of his election, and during his continuance in office, reside in the circuit or other territorial subdivision, for which he is elected, and whose term of office shall be for four years; and who shall be paid a salary to be fixed by law, and which shall not be increased or diminished during the term for which he is elected: Provided, that nothing in this Article shall operate to abridge the term or emoluments of any Solicitor now in office.

Respectfully submitted.

Robert J. Lowe,  
J. B. Duke,  
Jno. T. Heflin,  
Wm. H. Samford,  
Edward A. Graham,  
J. T. Kirk,  
Chas. W. Ferguson.

#### MINORITY REPORT

As to Sections 16 and 17 of the Report of the Committee on Judiciary:

Mr. President:

The undersigned, a minority of the Committee on Judiciary, respectfully differ with the majority of the Committee as to Sections 16 and 17 of the report of said committee.

The policy of this Convention seems to be that elections in this State shall occur every four years. This is indicated by the adoption of the report of the Committee on Executive Department, fixing the term of all State officers at four years, and also by the report of the Committee on Legislation. If the terms of the Judges of the several courts shall be fixed at six years, this will necessitate occasionally an election for Judges when no other offices are to be elected. The substitute proposed by the undersigned will obviate this and bring the election of Judges at the time when other officers will be elected. Our substitutes propose that all the Judges of Probate, Judges of Circuit Courts, Chancellors and Justices of the Supreme Court, shall be elected in the year 1904 for a term of six years, and that thereafter the terms of Judges of the Probate Court shall be four years, and the terms of Justices of the Supreme Court, Judges of the Circuit Courts and Chancellors shall be eight years. Our proposition also is that not more than one-half of the Justices of the Supreme Court shall be elected at one time. We think this last proposition will tend to increase the efficiency of said court. If our substitutes are adopted, there will be no necessity for an election for Judges and Chancellors at any other time than that fixed for the election of other officers. The term of Judges of the Probate Courts is reduced after 1910 to four years, and the terms of the other Judges and Chancellors increased to eight years after 1910. We do not deem it to the interest of the State that the term of Judges of the Circuit Court and Chancellors shall be reduced to four years, and as it seems impracticable to let said terms remain at six years, we deem it the better policy to fix the terms of those Judges and Chancellors at eight years. We believe that a better Judge can be found for an eight-year than a four-year term.

We, therefore, beg leave to submit herewith a substitute for each of said Sections 16 and 17. The substitute for Section 16 is as follows:

Section 16. In the year 1904 Judges of the Probate Courts, Judges of the Circuit Courts and Chancellors, shall be elected by the qualified electors of the respective counties, circuits and chancery divisions for a term of six years and until their successors are elected and qualified. In the year 1910, and every four years thereafter, Judges of the Probate Courts shall be elected by the qualified electors of the respective counties for a term of four years, and until their successors are elected and qualified. In the year 1910 and every eight years thereafter, Judges of the Circuit Courts and Chancellors shall be elected by the qualified electors for the respective circuits and chancery divisions for a term of eight years, and until their successors are elected and qualified. The right of such Judges and Chancellors to hold their offices for the full term hereby prescribed, shall not be affected by any change

hereafter made by law in any circuit, division or county in the mode or time of election.

The substitute for Section 17 is as follows:

Section 17. In the year 1904, the Chief Justice and Associate Justices of the Supreme Court shall be elected by the qualified electors of the State for a term of six years and until their successors are elected and qualified. In the year 1910, and every eight years thereafter, the Chief Justice shall be elected by the qualified electors of the State for a term of eight years, and until his successor is elected and qualified. Two of the Associate Justices elected in 1910 shall hold their offices for the term of four years, and two for the term of eight years, and until their successors are elected and qualified, and in the year 1914, and every four years thereafter, two of such Associate Justices shall be elected by the qualified electors of the State for a term of eight years, and until their successors are elected and qualified. The Associate Justices of said court elected in the year 1910, shall draw or cast lots among themselves to determine which of them shall hold office for the terms ending, respectively, in the years 1914 and 1918, and until their successors are elected and qualified, the result of said determination to be certified to the Governor by such Associate Justices or a majority of them prior to the first day of January, 1911, and also to be entered upon the minutes of the court. In the event of the failure of said Associate Justices to make and certify such determination, the Governor shall designate which of said Associate Justices shall go out of office in 1914 and 1918, respectively, and issue his proclamation accordingly. In the event of the increase or reduction by law of the number of Associate Justices of the Supreme Court, the General Assembly shall, as nearly as may be, provide for the election every four years of one-half of the whole number of Justices, including the Chief Justice of said Court, for a term of eight years.

Respectfully submitted,

Thos. H. Watts,  
Norville R. Leigh, Jr.,  
Edward A. Graham,  
J. McLean Jones,  
Wm. H. Samford,  
H. Pillans,

MR. SMITH—I move that the reports of the majority and of the minority as well, together with the Articles, be printed and that the Article be made a special order of business after the special orders already designated.

A vote being taken the motion was carried.

MR. BLACKWELL—I want to make a personal statement in justice to General Jones of Wilcox. On Saturday last when the report of the Committee on State and County Boundaries was up and while we were considering the proposition to reduce the constitutional area of counties from 600 square miles to 500 square miles, I overlooked the fact that I was paired with Gen. R. C. Jones. If he had been here he would have voted against any reduction. I desire to make this statement so that General Jones may be made to appear properly.

THE PRESIDENT PRO TEM—The next order of business will be the consideration of the Report on the Legislative Department.

Section 6 was read as follows:

Sec. 6. The pay of members of the Legislature shall be \$4 per day, and 10 cents per mile in going to and returning from the seat of government, to be computed by the nearest usual route traveled.

MR. OATES—I rise to ask unanimous consent to insert a word that seems to have been omitted. It is the word "the" between "pay of" and "members." It should read "The pay of the members," etc.

By consent the word was inserted.

MR. MURPHREE—I have an amendment.

The amendment was read as follows:

Amend Section 6 by striking out the word "ten" and inserting the word "five," and add at the end of the Section: "The members using free railroad passes shall not be entitled to any mileage from the State."

MR. MURPHREE—I have no objections if the members desire to vote separately on these two propositions. The first is to strike out "ten" and insert "five" for the mileage of members of the Legislature. It seems clear to me that the members of that body should not be allowed to charge 10 cents per mile, when they only have to pay 3 cents. That is more than three times what it costs and I cannot see the justice of it. Of course, where they have passes in their pockets they ought not to require the State to pay them 10 cents per mile.

It does not seem to me that it is necessary to make any speech in advocacy of either of these two amendments, it seems to me they speak for themselves.

So far as I am concerned I would like to have a record of the vote upon these two propositions but if others do not want it I shall not insist on it.

MR. OATES—I rise for the purpose of stating the views the Committee had in regard to this matter. It is reported in the exact words in which it appears in the present Constitution. The question was discussed in the Committee and in the opinion of some \$4 per diem was not enough. In the opinion of others the mileage of 10 cents was too much. So we thought upon an average it was about right, and we let it remain as it is and that is the only reason I know of that it should remain as it is.

The statement of the delegate from Pike is quite true that 10 cents is three times as much as it costs the members to travel. The only reason that was permitted to remain was because of the fact that I have suggested.

A friend asks the question suppose they would lay over on the way? That is never taken into consideration in allowing the mileage.

As to the latter part of the proposition, if a member has a pass and it does not cost him anything to come to the Legislature, of course, he should not collect mileage from the State. But I have no right to presume that such is or would be the case, that any member would travel upon a pass and then collect mileage.

MR. BROOKS—I move for a division of the question so that the question of taking a vote on the first part of the amendment can be passed on separately from the last part.

MR. deGRAFFENREID—I am opposed to members of the General Assembly using passes, but I am going to move to lay the amendment on the table and then a division can be called for.

MR. REESE—I would ask the gentleman to withdraw that so that I can offer a substitute for this amendment.

MR. deGRAFFENREID—I will withdraw it if the House permits me.

The motion to table was permitted to be withdrawn and the amendment substitute of the delegate from Dallas was read as follows:

Amend by striking out the word "ten" and insert the word "five."

MR. REESE—That amendment only relates to the first part of the amendment of the delegate from Pike. When we dispose of this matter the other matter can then be brought directly before the Convention as to whether a legislator can receive pay for mileage when he has not paid his fare.

MR. deGRAFFENREID—I move to lay the amendment to the amendment on the table, and the whole business.

MR. BROOKS—I call for a division of the question.

MR. SPEARS—Upon that division of the question I call for the ayes and noes.

MR. OATES—The division calls for a separation of the proposition striking out ten and substituting five, and the other is as to the pass proposition.

THE PRESIDENT PRO TEM—The Chair is of the opinion that the present parliamentary status of the question is not divisible. And the question is on the motion of the delegate from Hale to table.

There was no objection and the motion to table was withdrawn.

MR. O'NEAL—Now I move to lay the substitute of the gentleman from Dallas on the table.

A vote being taken the motion to table was carried.

MR. NESMITH—I now move to lay the amendment of the delegate from Pike on the table.

MR. OATES—If the delegate withdraws that I will move for a division.

MR. NESMITH—Under the rules that cannot be divided.

THE PRESIDENT PRO TEM—The Chair is of the opinion that the question involved in the amendment offered by the gentleman from Pike is divisible.

MR. BROOKS—I made the motion first for a division of the question, but I wish to say that the Convention in laying upon the table the substitute of the gentleman from Dallas relieves the Houses from the necessity of having any division of the question as that strikes the first proposition out.

MR. PETTUS—I rise to a point of order. A motion to table is not debatable.

MR. OATES—I do not understand that there is any motion to table now pending.

THE PRESIDENT PRO TEM—Then the question now is upon the adoption of the amendment of the delegate from Pike.

MR. deGRAFFENREID—And on that I call for the previous question.

MR. WADDELL—I offer an amendment.

MR. REESE—I rise to a point of order; there is a motion to table and no amendment can be offered at this time, and I call

for the ayes and noes. I desire to have the house put on record as to whether they are going to pay legislators mileage when they have passes.

THE PRESIDENT PRO TEM — The motion to table was withdrawn.

MR. NESMITH—I made the motion to table and never withdrew it.

THE PRESIDENT PRO TEM—The chair understood the gentleman had withdrawn his motion to table.

MR. NESMITH—I had not.

MR. WADDELL—I believe I have the floor. I offered an amendment and never yielded the floor.

MR. SAMFORD (Pike)—I rise to a point of order that the gentleman was not entitled to the floor; that a motion to table was pending.

THE PRESIDENT PRO TEM—The point is well taken and the motion is to table the amendment of the delegate from Pike.

MR. deGRAFFENREID—I call for a division of the question.

THE PRESIDENT PRO TEM—In the opinion of the chair, the amendment offered by the gentleman from Pike is divisible, and the question is, shall the question be divided?

MR. REESE—If it is capable of division, that is a matter of right and does not have to be submitted to the house. On the last proposition embraced in the amendment, I demand the ayes and noes.

THE PRESIDENT PRO TEM—It is the opinion of the chair that the question is capable of division, and the first part will first be put to the Convention, and the call of the gentleman from Dallas is a little premature at this time. The first part of the amendment is to strike out ten and insert five, and the question is on that part of the amendment.

MR. PILLSANS—I understood the question to be on the motion to table.

MR. BROWNE—On that the gentleman from Montgomery demands the yeas and nays.

MR. OATES—No, sir; I didn't do any such a thing.

THE PRESIDENT PRO TEM—The question is on the motion to table the first part of the amendment.



A vote being taken the first part of the amendment was tabled.

MR. REESE—On the motion to table the latter part of the amendment, I demand the ayes and noes.

The latter part of the amendment was read as follows: "Add at the end of the sections the words, 'The members using free railroad passes shall not be entitled to any mileage from the State.'"

MR. WHITE—I have a substitute for that.

THE PRESIDENT PRO TEM—The gentleman is out of order at this time. The pending motion is to lay on the table the part of the amendment just read, and on that the ayes and noes have been demanded. Is the call sustained?

The call was sustained.

MR. GREER—Would that apply to newspaper men whose passes are paid for by advertisement?

MR. O'NEAL—I would like to have the whole section read, including the amendment.

This was done, and the roll call then had, resulted as follows:

#### AYES

Banks,	Gilmore,	Reynolds (Henry),
Barefield,	Greer, of Calhoun,	Rogers, of Sumter,
Browne,	Greer, of Perry,	Searcy,
Bulger,	Harrison,	Sentell,
Byars,	Heflin, of Chambers,	Sloan,
Cardon,	Heflin, of Randolph,	Sorrell,
Carmichael, of Colbert,	Howell,	Stewart,
Case,	Inge,	Studdard,
Chapman,	Kirkland,	Vaughan,
Coleman, of Greene,	Maxwell,	Waddell,
Craig,	NeSmith,	Weatherly,
Davis, of DeKalb,	Oates,	Willet,
Davis, of Etowah,	O'Rear,	Williams, of Marengo,
Duke,	Pearce,	Wilson, of Washington,
Foshee,	Pitts,	
Foster,	Proctor,	

TOTAL.—46

#### NOES

Beddow,	Burns,	Espy,
Bethune,	Cobb,	Fletcher,
Blackwell,	Cofer,	Freeman,
Brooks,	deGraffenreid,	Glover,
Burnett,	Eley,	Graham, of Talladega,

Grayson,	McMillan, of Wilcox,	Rogers, of Lowndes.
Haley,	Malone,	Samford,
Handley,	Martin,	Sanders,
Hinson,	Merrill,	Sanford,
Hood,	Miller, of Marengo,	Smith, of Mobile,
Howze,	Miller, of Wilcox,	Smith, Mac A.,
Jackson,	Moody,	Smith, Morgan M.,
Jones, of Bibb,	Murphree,	Sollie,
Jones, of Hale,	Norman,	Spears,
Jones, of Montgomery,	Norwood,	Spragins,
Jones, of Wilcox,	O'Neal, of Lauderdale,	Taylor,
Kirk,	O'Neill (Jefferson),	Thompson,
Knight,	Opp,	Walker,
Leigh,	Palmer,	Watts,
Locklin,	Parker, of Elmore,	Weakley,
Lomax,	Pettus,	White,
Long, of Walker,	Pillans,	Whiteside,
Lowe, of Jefferson,	Reese,	Williams, of Barbour,
MacDonald,	Reynolds, of Chilton,	Wilson, of Clarke,
McMillan (Baldwin),	Robinson,	Winn,

TOTAL—75

## ABSENT OR NOT VOTING

Messrs. President,	Dent,	Long, of Butler,
Almon,	Eyster,	Lowe, of Lawrence,
Altman,	Ferguson,	Morrisette,
Ashcraft,	Fitts,	Mulkey,
Bartlett,	Graham, of Montgomery,	Parker, of Cullman,
Beavers,	Grant,	Phillips,
Boone,	Henderson,	Porter,
Carmichael, of Coffee,	Hodges,	Renfro,
Carnathan,	Jenkins,	Selheimer,
Coleman, of Walker,	King,	Williams, of Elmore,
Cornwall,	Kyle,	
Cunningham,	Ledbetter,	

By a vote of 46 ayes and 75 noes, the motion to table was lost.

MR. WHITE—I have an amendment.

The amendment was read as follows: "Amend Section 6, as amended by—"

MR. WADDELL—I rise to a point of order. Section 6 has not been amended.

THE PRESIDENT PRO TEM—In the opinion of the Chair the point of order made by the gentleman from Russell is well taken. The section has not been amended.

MR. WHITE—I offer it then as a substitute.

MR. OATES—For the section or the amendment?

MR. WHITE. As a substitute for the pending amendment.

The substitute was read as follows: "Substitute for amendment to Section 6, by striking out all of said section after the word 'provided' and insert the following: 'That the members of the legislature shall not accept free transportation from any common carrier, during his term of office. Any member receiving, or using any such free transportation, shall be guilty of a misdemeanor and shall forfeit his office.'

THE PRESIDENT PRO TEM.—The question is upon the adoption of the substitute offered by the gentleman from Jefferson to the amendment offered by the gentleman from Pike.

MR. WHITE. The amendment offered by the gentleman from Pike as I understand it, does not meet the difficulty. It is good as far as it goes, but it does not go far enough and I would like to have the amendment offered by the gentleman from Pike read in connection with my remarks.

The amendment of the gentleman from Pike was read as follows: "The member using free railroad passes shall not be entitled to any mileage from the State."

MR. WHITE.—Merely prohibiting a member in that way, will not accomplish anything. Transportation is very much more valuable than the mileage. The effect of that would be simply to deprive the member from accepting mileage from the State, and yet he may have annual passes in his pocket that will be worth hundreds of dollars to him. Now my amendment contemplates that he shall draw his mileage from the State as he ought to do. The State ought to pay its members mileage and they ought to be paid enough to cover that mileage. I am not opposed to ten cents a mile, because I do not believe in stinting a member of the legislature along that line, but I am opposed to a member of the legislature drawing his mileage from the State and accepting from the great lines of transportation free passes during his membership. You talk about the evils that have been inflicted upon this country, and I tell you sir, in my humble judgment there is nothing so ruinous to the interests of the people of the State as the use of free transportation by members of the legislature. What right have I, sir, or any other member of the legislature, to accept from a great corporation free transportation for myself during the time that I am a public servant? They tell us that it is not a bribe, and I think they are right. It is not intended, or it is not accepted at least, in that sense, but does not our common experience and our common observation along those lines lead us to conclude that it does in fact, have an undue influence over members whether it is so intended or not? It is not a question of intention, but it

is a question of what the effect of it is, and I say the effect of it is this, that you cannot, while members of the legislature carrying free transportation in your pockets, obtain for the people the redress that they are entitled to from such members. Is it right to provide a remedy for this thing? The great State of New York says it is right and places it in her Constitution. Other great States of the Union have declared it was right. The Constitution of Alabama today says it is right that free transportation should not be granted, and yet, in the face and in the teeth of that Constitution which they have sworn to observe, we know that it is granted and accepted.

MR. SMITH (Mobile)—You have spoken a good many times of the members accepting transportation. I desire to ask if the gentleman ever heard of transportation being tendered to a member without first being asked for?

MR. WHITE—Yes, sir, I have. I have had it tendered to me, and I had the great pleasure of saying that I would not accept it.

MR. SMITH—I didn't know it. I have been connected with railroads for about twenty-four years, and I have never heard of it.

MR. WHITE—And it was about twenty-four years ago when the offer was made to me.

MR. Smith (Mobile)—Oh, yes.

MR. WHITE—But that is sticking in the bark. Whether it is offered first and accepted, or whether it is requested, is not the question. The question is the getting of it. That is the material question. They receive it and it is immaterial to us whether it is tendered or whether it is solicited by the member. That is a matter that does not concern us. What we want to do is to say that you shall not accept it. You shall not use it, and when we have done that, then there will be no offer of free transportation on the one hand or solicitation of it on the other.

MR. REYNOLDS (Chilton) —The only thing it would do would be a forfeiture of office?

MR. WHITE—No, sir; I say it is a misdemeanor. My amendment not only makes it a forfeiture of his office, but it makes him guilty of a misdemeanor that he may be punished, and if any member desires to make it stronger than that, I have no objection, but I believe, Mr. President, that this provision in our Constitution and in life, something that is self-executing, something that will make the member guilty of a misdemeanor, and bring upon him the forfeiture of his office and the consequent disgrace, will be a substantial benefit to the people of Alabama. We are told now that the legislature only meets once in four years. Then the peo-

ple can only once in four years ask their representatives for relief from any grinding monopoly, or any extortion that may be perpetrated upon them by the great lines of transportation, and certainly if they can be heard only once in four years to speak through their representatives, these representatives ought to be free to act, for the benefit and in the interest of the people and not in the interest of the corporations which are bestowing favors upon them. I believe it is right to the corporations and I think the suggestion of the gentleman from Mobile has a great deal of force in it. I have no doubt that lines of transportation are solicited by the members of the legislature for these accommodations, and for these passes, and they cannot afford, Mr. President, to deny them, and I think the suggestion of the gentleman from Mobile carries with it a great deal of force. I have no doubt that the railroads themselves the lines of transportation, would be delighted if the members of the legislature could not solicit them, and I am sure the gentleman from Mobile feels exactly that way.

MR. COLEMAN (Greene)—Mr. President and delegates of the Convention, upon the vote to lay the amendment offered by the delegate from Pike upon the table, I with others voted aye. Many others voted no. Now that amendment by implication authorizes the issuance of free passes to representatives. That was the reason why we voted to lay it upon the table, and not because we were in favor of free passes at all. Now the substitute offered by the gentleman from Jefferson it seems to me is inopportune at this time. Adopt the section as reported by the Committee and when we reach the article on railroads or common carriers, then you may amend by making it a misdemeanor, or other offense, not only for representatives, but for every person who occupies an official position in the State of Alabama to accept a pass. Is there any more reason that a representative should be guilty of a misdemeanor, or should forfeit his office, then a judge or any other official? The proper way is, at the proper time, to provide such an amendment to the Constitution as will forever prevent the transportation of officials upon free passes. If you accept this amendment you are bound to provide by another amendment hereafter for the other officers of the State. Let it all come up in the proper place.

MR. ROGERS (Sumter)—For information could not these officers be added in right now, in this substitute

MR. COLEMAN (Greene)—It does not come up properly now. I will be found supporting the proposition of the gentleman at the proper time, but it seems to me that by his amendment he necessitates further legislation to make it applicable to other officers.

The President here resumed the chair.

MR. WHITE—Will the gentleman allow a word. This is certainly a great evil in your judgment?

MR. COLEMAN (Greene)—Well, I said that I would support your amendment.

MR. WHITE—Why not then correct this evil? We may not be able to correct the other, and then if we do correct the other, why not then let the Committee on Harmony and Consistency arrange the whole thing.

MR. COLEMAN (Greene)—I do not think the Committee on Harmony and Arrangement have any such powers as have been arrogated by the members of the Committee, or are supposed to belong to them. The Committee cannot change any ordinance, or edict of this Convention. It can only correct those things which are not in harmony or which may not be properly expressed, as to dates, etc.

MR. CHAPMAN—I would like to ask the gentleman a question. If the passing of this amendment as it is now would not be legalizing the issuance of free passes to members of the legislature, by recognizing that they could secure free passes.

MR. COLEMAN (Greene)—That is the effect of the amendment of the gentleman from Pike.

MR. CHAPMAN—That is what I speak of.

MR. COLEMAN (Greene)—And that is the reason why we voted to lay it upon the table, because we did not want to be put in the attitude of justifying the system of riding on free passes. The substitute offered by the gentleman from Jefferson if adopted of course would relieve it of that objection, but it seems to me that the proper time is when we reach as it was in the old Constitution, the duties of carriers, and then make the Constitution self-executing, and applicable to all of the officers of the State, not only to the members of the legislature but to the judges on the bench as well.

MR. SMITH (Mobile)—I do not rise in defense of the pass system, but I rise upon the question of the practicability of the gentleman's idea. This is not the first effort that has been made in any State of the Union to limit the use of passes, and I expect that the result of it will be found to be what the result has been in some of our sister States. The amendment which the gentleman offers would of course affect the eligibility of persons holding and using railroad passes. There are a number of people in the State connected with newspapers who have passes from Railroads upon grounds wholly disassociated from any legislative matter. There are a large number of attorneys throughout the State who represent railroads in various portions of Alabama as local attor-

neys, who receive passes as a part of their compensation. This substitute would exclude those classes.

MR. WHITE--If the gentleman will allow a question, is not that pass of the attorney a pass for which he has to work, or perform service, and it is not free at all, is it?

MR. SMITH---Well, I do not know. You may not consider it free, but I do not know whether the Supreme Court of the State would follow your judgment in the matter. I am inclined to think that it would not.

MR. BANKS---Could not the attorney for a railroad company, if he was elected to a position in the legislature, or any other office in the State, pay his own way as an officer or legislator?

MR. SMITH (Mobile)--Undoubtedly he could, upon the assumption that for the great privilege of serving the State he would make that sacrifice. So far as I am concerned, I am now filling the first office I have ever held, and if I remain in my right mind, and there is no very great overwhelming pressure brought upon me, I have filled the last office I will ever fill in the State of Alabama or elsewhere.

I hold in my hand my pass book as district attorney of the Louisville and Nashville Railroad, and the passes in this book are numbered consecutively from the day of its date down to the day that I went into politics. Two days before I went into politics I ceased issuing railroad passes and there has not been an entry in that book since two days before I went into politics down to the present time. So I have no great desire to use that privilege in a political way.

I hold the position of district attorney for the Louisville and Nashville Railroad Company in the State of Mississippi, from which I believe my friend from Jefferson originally hailed. Those people have worked a great reform. They not only put it into their Constitution, that no officeholder or legislator of any kind or description shall use or ride on a pass, but they have passed penal statutes for it, and I will say to you, gentlemen, when I first went into the office of district attorney for Mississippi, the worry of my life was the vain effort to obey the laws of the State of Mississippi. I found that if I insisted upon obeying the law I was going to be almost ostracised in that State, if they did not actually tear up the railroad track. I know of no State in the Union, where officers of the State absolutely demand and require a pass as they do in that great State, where they are prohibited both in the Constitution and in the statute. The clerks of the courts, the judges, and the sheriffs, the Federal Judges and Federal marshals and the Federal clerk always require passes on every railroad that enters the state, and it is directly under just such a constitutional

provision as you propose now, and so far as the influence of the railroad is concerned it is greatly magnified when they demand and accept those favors which are unlawful. As long as it is lawful, the officer can be independent of the railroad, but when they demand it, (and as I said to the gentlemen I have never heard of a pass being issued except under pressure direct or indirect. They are very much more sensitive to influences than when it is given to them without that pressure and demand, and without its being unlawful. If I believed it would accomplish the purpose, if I believed that it would stop the issuance of passes, that it would destroy this improper influence, I would be in favor of it, but even if you enforce it to the letter, it would not do any good. If a man who goes to the Legislature and wants a pass he is going to have it. He may pay his transportation to Montgomery, and he may pay his transportation back to see his friends and family. He may not use the transportation then, but gentlemen of the Convention, when the General Assembly adjourns if he has been a good friend to the railroad, and the law is turned loose on him, he is going to ask that railroad to show its gratitude by giving him a pass, after he has ceased to be an officer of the State of Alabama, and in gratitude it will be given. So I do not believe that the amendment will accomplish the purpose intended, and that is to destroy the influence of railroads with members of the Legislature. If you can devise any plan which would prevent the use of passes to secure improper influence with legislators, I would gladly join you in it, but I do not care to join in a mere matter of grandiloquence, a mere pretense of purity, which will not reach the evil for which it is designed.

MR. PILLANS — I desire to ask my distinguished friend whether a member of the Legislature ceases to be a State officer and a member of the Legislature on the day of the adjournment of a session of the General Assembly.

MR. SMITH (Mobile)—I think not, but I do not think one or two years can cancel our obligations to those who have befriended us.

MR. PILLANS—Next, whether his experience as a railroad man is that railroads are very prompt to issue a pass to a man after he ceases to be public officer?

MR. SMITH (Mobile)—Through my office, yes. No pass has ever been issued unless it was for past favors and no pass for such favor has ever been refused.

MR. WATTS—I am heartily in favor of this amendment. I want to go further even than the amendment of the gentleman from Jefferson, and if I could get his consent, and the consent of this Convention, I would like to offer a substitute, which he has in his



hands, and which covers the whole question, so that we may test it once and for all, and have it applied to every one.

MR. WHITE—I will ask unanimous consent of the House to offer this as a substitute for my amendment.

THE PRESIDENT—The gentleman asks unanimous consent to withdraw the substitute offered by him and in lieu thereof to offer the substitute suggested by the gentleman from Montgomery. Is there objection?

There being no objection, the substitute was read as follows:

"Any person who, while holding office in this State, or in any city or county thereof, including members of the General Assembly, solicits or accepts for himself or another, or uses, any free transportation, or transportation at a less rate than is open to the public generally, issued or granted by any corporation, or any officer thereof, shall be guilty of a misdemeanor and upon conviction of such offense forfeit his office."

MR. LONG (Walker)—I will ask the gentleman from Montgomery if he will not accept an amendment, providing that no person in this State shall ever use a railroad pass?

MR. WATTS—No, because I do not think that the public interests are likely to be affected in that way.

MR. LONG (Walker)—If a public man, not an official, were to accept a pass, would it not influence that man hereafter if he became an official?

MR. WATTS—But the object of this is that it shall not influence the man while he is in office.

MR. JONES (Montgomery)—I will ask the gentleman if he cannot accept this amendment, as I am in hearty sympathy with his amendment: "Provided, that this Section will not apply to any person who at the time of his election was an officer, employe, or attorney of such common carrier?"

MR. WATTS—I have no objection to that.

MR. FOSTER—I object to it.

MR. JONES (Montgomery)—If that substitute is the only thing before the House I offer this as an amendment.

THE PRESIDENT—The gentleman from Montgomery (Mr. Watts) has the floor, and offers a substitute to the amendment, which reaches the limit of parliamentary procedure.

MR. WATTS—We had in the Constitution of 1875, and it has been the law of this State ever since, a provision that free tickets or passes should not be given to, or accepted by public officers, but

it has had no effect whatever. What I want to see done, if it is possible, is to break up this system of giving and accepting passes, not as to individuals, but as to public officers.

Whenever a man is elected to an office in Alabama, his services are due to the people of the State, and it is a doctrine laid down in Holy Writ that a man cannot serve two masters. Robert Burns, Scotland's famous poet, touched the question when he said:

"But, ah, mankind is unco weak,

And little to be trusted,

When self the wavering balance shakes

'Tis rarely right adjusted."

The man who comes into the legislative halls with a pass in his pocket, or a man who sits upon the bench with a pass in his pocket is bound, in the nature of things, to lean to the corporation which has furnished him that accommodation. It is not right that a man should pass upon a question between the State of Alabama and one of its citizens, whether it be a corporation or not, and should be unduly influenced in the vote which he may give, by the fact that he has been put under obligation to a corporation or to an individual. A member should no more accept free transportation from a corporation than he should receive any other bribe which may be offered to him. We have provisions in this Constitution against the offering of any influence to affect the vote or action of any member of the Legislature or any officer, but we want to go further than that. That seems to have had no effect. I have been traveling upon railroad trains in this State, and I have seen judges and chancellors pull railroad passes out of their pockets and hand them to the conductors. I have seen members of this Convention do it. I do not pretend to be any more virtuous than anybody else. I have used passes many and many a time, but I never have used one when an officer, and this proposition of mine goes to a man's accepting these favors when he is an officer. When he ceases to be an officer, if the corporation feels like making him a donation of a pass, or any other gratuity, that is with them. The object of this substitute is to prevent that gratuity from being given in the first instance to influence his conduct. You may say it is not given for that purpose. Then what is the purpose for which it is given? Do you find corporations handing around their passes to the ordinary common citizens? Do you not find them handing the passes to men who are in official position, or who have the right to speak or to act in reference to matters which concern them? Why are they given, if they are not given for the purpose of influencing the judgment or action of parties to whom they are presented? They may give as many as they please to people after they have filled their terms of office, and after they have become

private citizens, and you will then find, gentlemen of the Convention, that the number which will be issued will be materially less. I will guarantee the assertion that there are not less than a thousand passes, yea, five thousand passes issued in this State in the course of one year, if we could get the truth of it. Ought that to be? Ought a judge, who sits upon the bench, and who is to decide between my rights and those of the corporation to be influenced in his decision by the fact that he has in his pocket the right to travel wherever he pleases upon the lines of that corporation? Should a member of the Legislature who comes here to vote on matters respecting the interests of the State of Alabama, have a pass in his pocket, so as to influence his vote in favor of the corporation where their interests may conflict? I am not against corporations. They are for the good of the State, but I am against any influence, no matter whence it may come, either of the Legislature or the Bench.

MR. LONG (Walker)—I did not intend to say anything upon this question, but it seems they are carrying it to such an extent as to apply to every person in the State of Alabama. I suggested that amendment, but the gentleman from Montgomery would not accept it. We are told it will apply to officers, and those who perform official acts. Why if a railroad gives a man an annual pass now, a citizen of this State, it might have an influence on him ten years from now, and, therefore, he should be forever debarred from holding office in the State of Alabama. The only exception, in my judgment, that should be made, is that of members of this Constitutional Convention, who should be excepted from the provisions of the act. I believe that an amendment like this should be adopted and if the Convention will vote down the other I shall offer it: "Amend Section 6 by adding the following: 'Hereafter every person who shall submit to the ignomy of being elected to the Legislature in this State, shall immediately after election be sentenced by the Supreme Court, and hung by the neck until dead; provided, that this shall not apply to the members of the Constitutional Convention.'"

Now, I was as much opposed to railroad passes as anybody. I do not think I have ever had my share of them. I have never had these big annuals like most of the big guns travel all over the State with. I wish I did have them. But we have got to the point of other people, and we have got to have passes occasionally or we will have to walk. I think if a man should run a hack in Montgomery, he should have a right to give me a ride in that hack if he wants to. I think he should also have a right to charge me for it, and if I am such a little puppy as to be influenced by the pass, I should not be entitled to a seat in the Legislature, as low down thing as it is. If you are going to make it apply to officials, let us make it apply to everything in the State of Alabama, including railroad attorneys, Presidents of railroads, and everybody else.

Apply it to everybody. Why do you except any? In my opinion, the richer a man the more able he is to pay for his ticket, the more passes he gets. We should also provide an amendment that nobody should have a private car to ride through this State. I know a distinguished citizen of the State of Alabama who never rides on a free pass, but he usually asks for a private car when he wishes to go anywhere. I do not see any amendment in here to prevent private cars. I think members of the Legislature should only be allowed in the smoker with the niggers. I don't think they should be even allowed to go in the Pullman. I think they should be strictly barred from going into the dining car, because it costs a dollar a meal to go there, and a member of the Legislature is not supposed to have a dollar, and if he gets so poor that he cannot support himself, he is subject to a bribe, and, therefore, you should limit his expenses down here, so that the corporations won't buy him up with money considerations. I hope the amendment will not pass, gentlemen. I did vote for, and am perfectly willing to have the amendment offered by the gentleman from Pike adopted, to forfeit a man's office if he rides on a railroad pass. I think that is going far enough. If not, apply it to everybody, and hang the officials giving the passes; hang the man for getting or asking for them. The only exception that I want is that members of this Constitutional Convention shall not be amenable to this act.

MR. OATES—I am fully aware of the object of the delegate from Pike, and the delegates from Jefferson and Montgomery in the amendments they have offered, are striving for the same thing, and I am not at all disposed to criticize it. I know their motives are good, and they are doing it to correct what is considered an evil. If it exists, it is indeed an evil, but it seems to me that the substitute and the amendment now pending are not in the proper place. They are not germane to this section, as it only provides for the mileage and per diem of the members of the Legislature.

We all know there is another part of the Constitution, and another section, which will come before this Convention, where these amendments will be much more appropriate, but I will not move to table, but will for the previous question on the section and the pending amendments.

MR. JONES (Montgomery)—Will the gentleman allow me five minutes?

MR. WHITE—Somebody has the right to close the debate. I offered the amendment and I believe I have the right to close and I yield to the gentleman from Montgomery.

THE PRESIDENT—The question is on the motion of the gentleman from Montgomery (Mr. Oates) for the previous question on the pending amendments and the section reported by the committee.

Upon a vote being taken the main question was ordered.

MR. OATES—Now, Mr. President, the delegate from Jefferson claiming the right to conclude after the previous question was ordered on his amendment yields to my colleague from Montgomery.

THE PRESIDENT—The right to conclude is with the gentleman from Montgomery as the chairman of the committee.

MR. OATES—Well I yield to the gentleman from Montgomery.

MR. JONES (Montgomery)—I am in hearty sympathy with the purpose of this substitute. I do not speak here for any railroad, or in any other capacity except as a plain representative of the people. The trouble about putting this question off is that we may not get to it hereafter. If we put it in now, and we come to a more appropriate place, and pass something that applies to everybody, why, then we can take it out here. There will be no trouble about that.

My experience has been, and I have had a great deal of experience, that the railroads as a rule are more sinned against than sinning. I do not think that the men who take these passes, take them as bribes, but a bad habit has grown up. Members say others receive them and they should, too, and the railroads are afraid to refuse. I have known a Judge with a pass in his pocket, who was so afraid that some one would think he was influenced, that he would rule against me, when in his normal condition he would have probably ruled otherwise. On the other hand I have argued cases before Judges that I believed before my God were deciding against me in favor of a corporation because they had received its favors.

Now if this Constitutional Convention cannot put a self executing provision in the Constitution that will stop this evil we had better adjourn at once. We can stop it. It has been stopped in the State of New York. It has been stopped in Kentucky, and it has been stopped in Louisiana, and it has been stopped everywhere they have made a real bona fide effort to do it.

I desire to get in an amendment regarding cases which I do not believe comes within the evil, where the man was an officer or employee at the time of his election, but it seems members don't want that, and I am willing to take the substitute just as it is. The evil is a great scandal as it is. It will be a great step in aid of official purity, and will elevate our people, if we take decided steps now to punish a breach of the Constitution which has been a reproach to our good name for twenty-five years past.

**THE PRESIDENT**—The question is on the adoption of the substitute of the gentleman from Montgomery, which was accepted by the gentleman from Jefferson, by unanimous consent of the Convention.

**MR. WHITE**—I call for the ayes and noes.

The call was sustained, and a reading of the substitute, amendment and section called for. The same was read.

**MR. SAMFORD**—I rise to a point of inquiry.

**MR. BURNS**—I rise to a point of privilege.

The clock struck one.

**MR. SAMFORD**—The original section reads with reference to the pay of members of the Legislature, and then the gentleman from Pike, Mr. Murphree, offers an amendment to that, and the gentleman from Jefferson offers a substitute to that.

**MR. WADDELL**—I rise to a point of order. This Convention is now adjourned.

**MR. WHITE**—I move that the Convention remain in session until the vote is taken.

**THE PRESIDENT**—The gentleman from Pike has the floor; the delegates will please be in order.

**MR. SAMFORD (Pike)**—I would like to know if the substitute of the gentleman from Jefferson in case of its adoption does away with the amendment offered by the gentleman from Pike?

**THE PRESIDENT**—If adopted as a substitute it would take the place of that amendment.

**MR. WHITE**—I move that this Convention remain in session until after the vote is taken.

**MR. JONES (Montgomery)**—I make the point of order that we cannot adjourn when a vote is about to be taken. The previous question has been ordered. The Chair decided against me that way yesterday.

**THE PRESIDENT**—The Chair will rule upon the point of order. A motion to adjourn is not in order while a vote is being taken, but if the hour of adjournment arrives, as it has today, pending the discussion of the question, the Convention will stand adjourned, and it does stand adjourned under the rules until 3:30 o'clock this afternoon.

The Convention thereupon adjourned.

## AFTERNOON SESSION

The Convention was called to order by the President and the roll being called showed the presence of 114 delegates.

Indefinite leave of absence was granted Mr. Gilmore on account of sickness. Leave of absence was granted Mr. Ashcraft for Wednesday and Thursday.

MR. HINSON—Mr. President, I desire to make a motion to suspend the rules for the purpose of moving to reconsider the vote whereby the previous question was ordered upon the substitute and the amendment to Section 6 for the purpose of offering an amendment which reads as follows:

"To amend Section 6, Article —, by striking out the word 'four' where it occurs in the first line and inserting the word 'six.'"

MR. REESE—I rise to a point of order.

THE PRESIDENT—The question is not debatable. It strikes out \$4.00 a day and inserts \$6.00.

MR. HINSON—I move to strike out four and insert six.

THE PRESIDENT—The question will be first on the motion to suspend the rules.

And a vote being taken on a division, resulted in 43 ayes and 48 noes, and the motion to suspend the rules was lost.

THE PRESIDENT—The question will recur on the substitute offered by the gentleman from Jefferson to the amendment offered by the gentleman from Pike to the section as reported by the Committee on Legislative Department, and the yeas and nays have been demanded.

And the call was sustained.

The substitute was read again.

Result of the roll call was as follows:

## AYES.

Banks,	Glover,	Locklin,
Beddow,	Graham, of Talladega,	Lowe (Jefferson),
Boone,	Handley,	McMillan (Baldwin),
Brooks,	Hood,	Malone,
Cobb,	Jackson,	Merrill,
deGraffenreid,	Jones, of Bibb,	Miller (Marengo),
Duke,	Jones, of Hale,	Miller (Wilcox),
Espy,	Jones, of Montgomery,	Moody,
Fitts,	Kirk,	Murphree,
Fletcher,	Leigh,	Norwood,

Oates,  
O'Neal (Lauderdale),  
Parker (Elmore),  
Pettus,  
Pillans,  
Pitts,  
Robinson,  
Total—51.

Sanders,  
Sanford,  
Selheimer,  
Smith, Mac. A.,  
Smith, Morgan M.,  
Sollie,  
Spears,

Spragins,  
Stewart,  
Vaughan,  
Walker,  
Watts,  
White,  
Winn.

## NOES.

Messrs. President,  
Barefield,  
Bartlett,  
Blackwell,  
Browne,  
Bulger,  
Burnett,  
Burns,  
Byars,  
Cardon,  
Carmichael, of Colbert.  
Case,  
Chapman,  
Cofer,  
Coleman, of Greene,  
Cornwall,  
Craig,  
Davis, of DeKalb,  
Davis, of Etowah,  
Eley,  
Eyster,  
Foshee,  
Foster,  
Gilmore,  
Total—72.

Grayson,  
Greer, of Calhoun,  
Greer, of Perry,  
Haley,  
Harrison,  
Heflin, of Chambers,  
Heflin, of Randolph,  
Hinson,  
Hodges,  
Howell,  
Howze,  
Inge,  
Jones, of Wilcox,  
Kirkland,  
Knight,  
Long (Walker),  
Macdonald,  
McMillan (Wilcox),  
Martin,  
Maxwell,  
NeSmith,  
Norman,  
O'Neill (Jefferson),  
Opp,

O'Rear,  
Palmer,  
Parker (Cullman),  
Pearce,  
Porter,  
Proctor,  
Reese,  
Reynolds (Henry),  
Searcy,  
Sentell,  
Sloan,  
Smith (Mobile),  
Sorrell,  
Studdard,  
Thompson,  
Waddell,  
Weakley,  
Weatherly,  
Whiteside,  
Willet,  
Williams (Barbour),  
Williams (Elmore),  
Wilson (Clarke),  
Wilson (Washington).

## ABSENT OR NOT VOTING.

Almon,  
Altman,  
Ashcraft,  
Beavers,  
Bethune,  
Carmichael, of Coffee,  
Carnathon,  
Coleman, of Walker,  
Cunningham,  
Dent,  
Ferguson,

Freeman,  
Graham, of Montgomery,  
Grant,  
Henderson,  
Jenkins,  
King,  
Kyle,  
Ledbetter,  
Lomax,  
Long (Butler),  
Lowe (Lawrence),

Morrisette,  
Mulkey,  
Phillips,  
Renfro,  
Reynolds (Chilton),  
Rogers (Lowndes),  
Rogers (Sumter),  
Samford,  
Tayloe,  
Williams (Marengo),



During the roll call:—

MR. BURNS—I rise to a point of information.

THE PRESIDENT—The gentleman will state the point of inquiry.

MR. BURNS—I want to know whether, under the substitute or that amendment, if I could buy a thousand-mile ticket for ten cents, would that be an offense?

THE PRESIDENT—The chair is not an expert on that department of railroad management.

MR. HEFLIN (Chambers)—I was not in when the amendment was read. I understand it includes all city officers and the military of the State. It is too far-reaching, and I therefore vote no.

MR. LOMAX—On this question I am paired with the gentleman from Lawrence, Mr. Almon. If he were present, I am informed, he would vote no and I would vote aye.

MR. ROGERS (Sumter)—I am paired with Mr. Williams from Marengo. If he were present, he would vote no and I would vote aye.

MR. WHITE—I move to reconsider the vote whereby the previous question was called on this measure with a view of offering this amendment.

THE PRESIDENT—The motion to reconsider is not in order after the previous question has been ordered.

MR. WHITE—I desire to call the attention of the chair to the fact that a motion to reconsider is always in order, except under the rules where the main question has been passed upon, and then it is postponed until the next day, but where a subsidiary question is disposed of, a motion to reconsider is in order at any time.

THE PRESIDENT—I will refer to the rules. "When a vote has passed, except on the previous question, or on motion to lay on the table, or to take from the table, it shall be in order for any delegate who voted with the majority to move a reconsideration thereof on the same day, or within the morning session of the succeeding day, and such motion, if made on the same day, shall be considered immediately after the approval of the journal on the day succeeding that on which it is made; but if first moved on such succeeding day, it shall be forthwith considered; and when a motion for reconsideration is decided that decision shall not be twice reconsidered. A motion to reconsider a vote upon any incidental or subsidiary question, shall not remove the main subject

under consideration from the house, but shall be considered at the time when it is made."

The rule the gentleman refers to relates to the time for the consideration of the motion to reconsider, but the question goes back of that, that a motion is not in order to reconsider a vote whereby the previous question had been ordered, because in the first instance when a vote has passed, except on the previous question, a motion may be made to reconsider. No vote to reconsider can be made under the rules where the previous question has been ordered.

MR. WHITE—I move a suspension of the rules in order that that motion may be made. I desire to introduce an amendment which simply covers members of the Legislature.

MR. LONG (Walker)—I rise to a point of order. The gentleman didn't vote with the majority. He got up to change his vote, but didn't do it.

MR. WHITE—That was not the question. We were voting on the amendment. I did vote with the minority on that amendment, but I voted with the majority when the previous question was ordered.

THE PRESIDENT—It seems to the Chair that the gentleman is in order to make the motion.

MR. WHITE—Now I call for the ayes and noes on that.

THE PRESIDENT—It is moved to suspend the rules for the purpose of reconsidering the action whereby the previous question was ordered. The ayes and noes are called for, is the call sustained?

MR. HINSON—I rise to a question of information. Is the motion to reconsider the vote whereby the previous question was ordered upon both the amendment and the section?

MR. deGRAFFENREID—Yes, sir.

MR. O'NEAL—It opens the whole section for amendment.

The call for the ayes and noes was sustained and the result of the roll call was as follows:

#### AYES.

Banks,	Cobb,	Fletcher,
Bartlett,	Coleman, of Greene,	Foster,
Beddow,	deGraffenreid,	Glover,
Boone,	Duke,	Graham, of Talladega,
Brooks,	Eley,	Grayson,
Burns,	Espy,	Handley,
Chapman,	Fitts,	Hinson,

Hodges,	Miller (Wilcox),	Sanford,
Hood,	Moody,	Searcy,
Howze,	Murphree,	Selheimer,
Jackson,	Norman,	Smith, Mac. A.,
Jones, of Bibb,	Norwood,	Smith, Morgan M.,
Jones, of Hale,	Oates,	Sollie,
Jones, of Montgomery,	O'Nael (Lauderdale),	Spears,
Kirk,	Opp,	Spragins,
Leigh,	Parker (Elmore),	Vaughan,
Locklin,	Pettus,	Walker,
Lomax,	Pillans,	Watts,
Malone,	Pitts,	White,
Martin,	Robinson,	Whiteside,
Merrill,	Samford,	Winn,
Miller (Marengo),	Sanders,	
Total—65.		

NOES.

Messrs. President,	Haley,	Proctor,
Barefield,	Harrison,	Reese,
Blackwell,	Heflin, of Chambers,	Reynolds (Henry),
Browne,	Heflin, of Randolph,	Rogers (Lowndes),
Bulger,	Howell,	Sentell,
Burnett,	Inge,	Sloan,
Byars,	Jones, of Wilcox,	Smith (Mobile),
Cardon,	Knight,	Sorrell,
Carmichael, of Colbert,	Long (Walker),	Stewart,
Case,	Macdonald,	Studdard,
Cofer,	McMillan (Baldwin),	Thompson,
Cornwall,	McMillan (Wilcox),	Waddell,
Craig,	Maxwell,	Weakley,
Davis, of DeKalb,	NeSmith,	Weatherly,
Davis, of Etowah,	O'Neill (Jefferson),	Willet,
Eyster,	O'Rear,	Williams (Barbour),
Foshee,	Palmer,	Williams (Elmore),
Gilmore,	Parker (Cullman),	Wilson (Clarke),
Greer, of Calhoun,	Pearce,	Wilson (Wash'gton),
Greer, of Perry,	Porter,	
Total—59.		

ABSENT OR NOT VOTING.

Almon,	Coleman, of Walker,	Henderson,
Altman,	Cunningham,	Jenkins,
Ashcraft,	Dent,	King,
Beavers,	Ferguson,	Kirkland,
Bethune,	Freeman,	Kyle,
Carmichael, of Coffee,	Graham, of Montgomery,	Ledbetter,
Carnathan,	Grant,	Long (Butler),

Lowe (Lawrence),  
 Lowe (Jefferson),  
 Morrisette,  
 Mulkey,

Phillips,  
 Renfro,  
 Reynolds (Chilton),  
 Rogers (Sumter),

Taylor,  
 Williams (Marengo),

(During roll call.)

MR. ROGERS (Sumter)—I am paired with the gentleman from Marengo, Mr. Williams.

MR. PETTUS—I rise to a question of inquiry. This is a motion to suspend the rules. I make the point of order that the motion to suspend the rules under Rule 27 on page 11 is not necessary to suspend the rules to move to reconsider the previous question because the previous question is a subsidiary question and under Rule 27 a motion to reconsider a vote upon any incidental or subsidiary question shall not remove the main subject under consideration at the time when it is made. I will read to the Chair from "Robert's Rules of Order" on page 34 which gives a list of the subsidiary questions:

"Lay on the table.

"The previous question.

"Postpone to a certain day."

I make the point of order that it is not necessary to suspend the rules. Under the rules of the Convention, a question comes up at once for reconsideration. I don't think the amendment would be a subsidiary or incidental question. The list, as found in Robert's Rules of order are to lay on the table, the previous question, postpone to a certain day, amend or postpone indefinitely.

THE PRESIDENT—The gentleman makes the same point of order or rose to a question of inquiry—raises the same point raised by the gentleman from Jefferson. The rule there relates to the time when a motion to reconsider shall be considered by the house. The gentleman is correct about that. If it relates to the main question the motion to reconsider shall be considered on the following day. If it relates to a subsidiary question is shall be forthwith considered. The rule distinctly provides that no motion to reconsider is in order where the previous question has been ordered, under our rules. If the gentleman will refer to the rules, he will see that a motion to reconsider where the previous question has been ordered is expressly excepted from the motion to reconsider and without a suspension of the rules that motion is not in order. Rule 27 provides when a vote has passed, a motion may be made to reconsider except on the previous question or on motion to lay on the table.

MR. BROOKS—If the President will look at that again, he will see that it means a reconsideration of a vote refusing the

previous question but not after the previous question has been called for. When a vote has passed, except on the previous question, you can move to reconsider the vote by which the previous question was called.

THE PRESIDENT—The previous question in this case has been ordered; and the rule expressly provides that a motion to reconsider a vote by which the previous question was ordered is not in order without a suspension of the rules, and the Chair overrules the point of order.

And upon a vote being taken resulting in 65 ayes and 69 noes, the motion to suspend the rules was lost.

THE PRESIDENT—The question recurs on the amendment offered by the gentleman from Pike.

MR. O'NEAL—Is a motion to lay the entire section on the table in order?

THE PRESIDENT—No, sir.

Why not?

THE PRESIDENT—Because the previous question has been ordered.

And upon a vote being taken resulting in 46 noes and 58 noes, the amendment was lost.

MR. O'NEAL—I call for the ayes and noes.

The call was not sustained.

MR. deGRAFFENREID—I rise to a point of inquiry. When we adjourned today for dinner, we were about to have a roll call for taking a vote I think. That is my recollection, and I don't know but what we are now entitled to an aye and no vote by virtue of a former action of the House.

THE PRESIDENT—The Chair overrules the point.

And upon a vote being taken, the section as reported by the committee was adopted.

Section 7 was then read as follows:

Sec. 7. The legislature shall consist of not more than thirty-three Senators, and not more than one hundred members of the House of Representatives; to be apportioned among the several districts as prescribed in this Constitution; provided, that upon the creation of any new county, it shall be entitled to one Representative in addition to the number above named.

MR. OATES—I discover on reading that section that there is a mistake, there has been an omission which was not intended. It

reads "To be apportioned among the several districts as prescribed in this Constitution. It should read "To be apportioned among the several districts and counties as prescribed in this Constitution."

There was no objection and the words "and counties" were inserted in the place indicated.

MR. PITTS—I offer an amendment.

Amend Section 7 of the ordinance reported by the Committee on Legislative Department by striking out the words 33 in the first line of the seventh section and inserting in lieu thereof "35" and strike out the words "one hundred" in the second line and insert in lieu thereof "one hundred and five."

MR. PITTS—The purpose of this amendment is to make this section correspond with the ordinance reported by the majority of the Committee on Representation. That Committee has fixed the number of representatives at 105 and the number of Senators at 35 and this amendment is simply for the purpose of making the two correspond. I desire to submit some reasons which prompted the majority of the Committee on Representation to fix the number of representatives at 105 and the number of senators at 35. The Committee first agreed to fix the representation upon population and then it first agreed to fix the number of representatives at 100 and senators at 33 as provided in this section. I desire to say, Mr. President, that the Committee labored as faithfully and as honestly as men could labor. Of course there was no trouble to apportion the representatives among the counties because that was a mere matter of arithmetic but the Committee discovered a grave injustice would be done a great number of the counties if the representation was left at 100 and the senators at 33.

I will give you some statistics to show you the injustice of it. In the first place two counties would lose a representative, Lauderdale and Russell not on account of decrease of population, but simply because some other county had increased more rapidly in population. But that did not influence the Committee. But they discovered that if the presentatives were left at 100, eight counties, namely, Lauderdale, Russell, Elmore, Etowah, Butler, Greene, Pickens and Walker, with a population of 206,609 would be entitled to eight representatives alone and the counties of Bullock, Clarke, Hale, Lee, Morgan, Perry, Pike and Tallapoosa with only 242,021 inhabitants would be entitled to sixteen representatives, in other words with only a difference of about 35,000 inhabitants they would be entitled to twice the number of representatives that the first eight named counties have. They also discovered if the number of representatives remained at 100 that the counties of Butler, Etowah, Elmore, Greene, Lauderdale, Russell, Pickens and Walker, although they had much more property than these other counties would yet be entitled to only half of the representatives the other eight coun-

ties had. They discover that these eight counties would only have eight representatives with a population of 206,000 and Jefferson would have 8 with only 142,000. They discovered further, if the representation is fixed at 100 that Clarke County, with 27,790 inhabitants, would be entitled to two, while Etowah with 27,390 a difference of about 429, would only be entitled to one. They further discovered if the representation is kept at 100 that Russell County, with a population of 27,083 would be entitled to one representative and Lauderdale with 27,361 would be entitled to one representative and the county above it with only a difference of less than five hundred would be entitled to two.

They further discovered if the representation is fixed at 100 and the Senators remained at 33 as by the minority report, that Etowah, with a population greater than either Lauderdale or Russell would be entitled to one representative and these counties would be entitled to two. They also discovered that if the minority report is adopted that fixes the representation as it has been that the senatorial district of Barbour with a population less than that of Henry would remain as it is, and Henry, Geneva and Dale, with over twice the population, would compose one Senatorial District.

Now, Mr. President, with all these facts in view, without going into detail the committee decided they would ask the Convention to fix the representatives at 105 and that in doing that, no great injustice would be done to any county, but one, namely, Greene, and the representative from Greene, in his magnanimity said "that is all right. We will raise no objection about it." I want to say further that these five representatives will go to the white counties. Something has been said about the black belt getting a majority. I want to say that everyone will go to white counties. Jefferson will get one, Butler will get one, Elmore will get one, Etowah one and Walker one. There are no objections raised by the representatives of the black belt counties. They had no objections, but thought an injustice would be done if it was not fixed at 105.

Now as to what we find if the Senatorial districts remain at 33. We find it utterly impossible to give satisfaction. Some large counties are so situated that you cannot join any small county with them, because there is none there, and you could not take one of the adjoining counties, because it would make the population too big, but by fixing the Senators at 35 we believe entire satisfaction will be given. Only one will be neglected, but the representatives from the district are more than willing to have it that way. So we think it is right and proper and eminently just that the representatives shall be fixed at 105 and the Senators at 35.

Something will be said about this body of 105 being unwieldly. With a body of 155 in this Convention, I submit that the quorum and order has been pre-eminently preserved, and I believe it can be preserved with 105.

As to the increased pay, there are only five representatives and two Senators, and with quadrennial sessions, we don't believe the plan recommended by us and which is set forth in this amendment, will give entire satisfaction.

MR. GRAYSON—The minority of the Committee on Representation was of the opinion that it was the duty of this Constitutional Convention to fix the basis of representation and it was a legislative duty devolving on the next Legislature to fix the apportionment, and that minority were of the impression that the time honored rule of 100 Representatives and thirty-three Senators should be adhered to. We see no good reason for any change. This number of Representatives and Senators has obtained for half a century. More than that would be unwieldly, and once open the door for an increase of Senators and Representatives and at every census there will be a demand for an increase, until we shall have a House absolutely unwieldly and a Senate nearly so.

As to the remarks of the gentleman from Dallas to the effect that it has become necessary to increase the Representatives in order to equalize some counties that had not as much representation and had a greater population than other counties, they have gone on and made a mistake as to two other counties. Take a basis of representation of 100 or 105; the difference is small, relatively, and upon a basis of 100 representatives with a population of 1,828,600 there would be an average of 18,286 to each representative. Taking that as a basis, we find that the county of Walker has one representative with a fraction of 6,876 over. Butler has one with a fraction of 7,475 over. Elmore has one with a fraction of 7,813 over.

MR. LONG (Walker)—I rise to a point of order. The gentleman is not confining his remarks to the subject before the house. It is not a question of where the representatives should go. We are fixing the number. The gentleman is making an argument against the county of Elmore and it is not proper at this time.

THE PRESIDENT—The chair is of the opinion that the gentleman is within the reasonable limits of discussion.

MR. GRAYSON—I see the gentleman is a little sore.

MR. LONG (Walker)—Will the gentleman yield for a question?

MR. GRAYSON—Not until I get through. The county of Etowah has a fraction of 9,075 over one. Madison has a fraction



of 7,338. Mobile a fraction of 7,882. Now, as I went on to explain before, there were two counties that had two representatives with a smaller population than two other counties with a little greater population, and, in order to equalize that and see that no injustice should be done, they propose to increase the number of representatives so that no injustice would be done those counties and, in curing one injustice, they propose by the report of that committee, to do another act of injustice by giving two counties with smaller fractions over an extra representative over counties that have a greater fraction. The county of Mobile has 7,882 fraction over and Walker County has 6,876 and Elmore 7,812, and the County of Madison has 7,338, fraction over and above the regular ratio, being nearly 1,000 more than the County of Walker.

The minority of the Committee was of the impression from the outset that it would be wiser on the part of the Convention, to wake up no more snakes than we have already waked up and no more than we can kill. When we go before the people of Alabama making changes, especially in the senatorial districts, taking counties from one district and adding to another there will be dissatisfaction that will militate greatly against the adoption of this Constitution, the great desideratum of which is the reform of the suffrage question, and I claim it is wrong on the part of this Convention to inject anything into the Constitution that is needless, to inject anything that can be deferred to the legislature so that when the vote is taken on the adoption of the Constitution we will have nothing but the main question for which we were sent here for, for the people to vote upon.

MR. LONG (Walker)—Did you not state to the Committee on Representation that you would vote for the increase if they gave Madison County another representative?

MR. GRAYSON—And I will vote for it yet. I expect when the report of that Committee comes up to move to add Madison and Mobile.

MR. PITTS—Don't Mobile and Madison have a Senator each and is not Walker put in a senatorial district with two other counties and so as to the matter of senators have not those two counties three times as many senators as the county of Walker?

MR. GRAYSON—Senators and representatives are two different things, and they are altogether upon different bases. If that is your theory here is Talladega County with 36,000 while Jefferson has 130,000 and they each have one Senator.

MR. BARFIELD—How many inhabitants has Madison County?

MR. GRAYSON—43,700.

MR. BAREFIELD—How many representatives?

MR. GRAYSON—Two.

MR. BAREFIELD—How many Senators:

MR. GRAYSON—One. I have just said the basis of Senator and representatives is altogether different. If you go on that basis the County of Jefferson would be entitled to twenty representatives, Mobile would be entitled to two or three more, Montgomery would be entitled to one more, but I maintain that the basis for senators is fixed on a different plan and it has been a custom heretofore that no county should have more than one senator. It is fixed upon a separate and distinct basis and you have no right to add fractions.

MR. GRAHAM (Talladega)—I desire to correct the gentleman. He stated that Talladega had only 32,000 inhabitants. The number is 36,000, just a little short of Madison.

MR. GRAYSON—I may have gotten the counties a little mixed, but the counties of Talladega, Wilcox and Calhoun which they propose to give separate senators are away down in the thirties and Madison has nearly 44,000. I am not arguing about Madison County, but arguing chiefly upon the ground that it is the duty of the Convention to vote down all these amendments and fix it at 100 representatives and 33 senators and refer the apportionment to the next legislature.

MR. LONG (Walker)—I appreciate the position of the distinguished Chairman of the Committee on Representation. Although I am not a member of that Committee, I was a member during the last House of Representatives of the Committee on Apportionment, and we labored for several days trying to adjust this matter of representation based upon 100 in the House and 33 in the Senate and we were unable to make an apportionment with anything like equity.

If there is anything in the world I like, it is consistency. The gentleman from Madison, who has just addressed you, voted for the increase and was ready to do it again, but won't do it simply because Madison County won't get one and the poor little County of Walker will.

MR. GRAYSON—Will the gentleman allow me to interrupt him?

THE PRESIDENT—Does the gentleman yield?

MR. LONG (Walker)—No, sir; I shall have to pay back his discourtesy. Now Madison County has 43,000 and Walker County has between twenty-five and twenty-six thousand. The county of Madison pays taxes on seven million dollars of property and my

county pays on over \$6,000,000. Madison County has three representatives and my county one, and they are scheming to keep us from getting one more and for them to have four. They should have 100,000 inhabitants and pay taxes on \$24,000,000 to have four times our representation.

It is true, we don't base representation on wealth, but the great State of Alabama is nothing more than a stock company and the shareholders in the company are the sixty-six counties and those shareholders should be entitled to the gifts of the State as much as possible in proportion to the amount of taxes they pay towards the support of the corporation, the State of Alabama.

Why, Mr. President, it is all out of order at this time, according to my notion, but when the report of the Committee on Representation comes before this house, if I can't convince any fairminded man, any man who has any honesty of purpose, that my county is entitled to another representative I don't want it.

The matter has been carefully examined and with only 100 representatives and 33 senators it cannot possibly be arranged without doing injustice to some of the counties.

Now the County of Walker is a white county. It has a white population of four times the white population of the County of Bullock, seven times the white population of Greene, five times the white population of Hale, four and a half times the white population of Lowndes and one and a quarter the white population of the great County of Montgomery, four times the white population of either Perry, Russell or Sumter, also four times the white population of the great County of Wilcox. We are not asking that this should be done but we are asking justice for all the counties in Alabama and that cannot be given unless this increase of five representatives and two senators is given. Unless we allow this it cannot be changed until another Constitution. You have fixed the sessions of the legislature at four years and the expense of these additional seven members will be trifling.

Now I move the previous question on the amendment and the section as reported.

MR. OATES—Is it not passing strange that these members of the Committee on Representation get up and take this section away from the Committee on the Legislative Department.

MR. LONG (Walker)—You have a right to close the debate.

MR. OATES—But there are other members of the Legislative Department who have a right to be heard on this matter.

MR. HINSON—I want to ask the gentleman from Walker to withdraw that motion for the previous question. I think the

gentleman will agree that the report of the Committee on Representation is entitled to some consideration on this floor——

THE PRESIDENT—The gentleman is not in order. Debate is out of order after a motion for the previous question.

MR. HINSON—I am not debating it. I am satisfied the gentleman will agree with me that this Convention ought not to absolutely ignore the report of the Committee on Representation by adopting this section.

THE PRESIDENT—The gentleman will be in order.

MR. HINSON—Will the gentleman withdraw that motion for the previous question?

THE PRESIDENT—The gentleman will take his seat.

MR. LONG (Walker)—I do not want to cut off any amendments and I am willing for the Convention to debate it for three years and I withdraw the provision.

MR. GRAYSON—I rise to a question of personal privilege. The gentleman from Walker declines to answer a question and I want to correct a statement that he made. He made the statement that I had voted for the majority report of the Committee on Representation. Where the gentleman got that information I don't know. I never cast such a vote.

MR. LONG—I understood the gentleman voted for the increase. If I have been misinformed, I regret it.

MR. JONES (Montgomery)—(To Mr. Oates, who had been recognized.) Will the gentleman from Montgomery allow me to send up an amendment.

MR. OATES—Yes.

The amendment was read as follows: Amend Section 7 by adding at the end thereof the following words: No member of the Legislature shall ask, receive, accept or use for himself or for the benefit of another any free pass on any ticket sold at a discount other than as sold to the public generally. Any member of the Legislature violating the provisions of this section is guilty of a misdemeanor and on conviction shall be fined \$250 and forfeit his office.

THE PRESIDENT—The amendment is not in order.

MR. JONES—Why.

THE PRESIDENT—There is an amendment pending.

MR. JONES—There can be two amendments.

THE PRESIDENT—No.

MR. JONES—Then I offer it as an amendment to the amendment.

MR. OATES—I will ask my colleague to withhold it, It is not germane.

MR. JONES—I will withdraw it as I got the floor by the courtesy of the gentleman.

MR. OATES—As soon as this section was read the delegate from Dallas jumped up, got his amendment in with reference to the number of Senators and Representatives. Now it is strictly within the jurisdiction of the Committee on Legislative Department to report the number of Senators and Representatives and it is the province and duty of the Committee on Representation when that question is settled to apportion the number which the Convention fixes upon for counties and districts, but the Committee on Representation jumps in here with a controversy between themselves about the number.

Speaking for the Committee on Legislative Department, this matter was fixed by the committee and they were of the opinion that we should retain the number we have now, 33 Senators and 100 Representatives. There is no minority report on that.

Whatever may have been the figuring of the Committee on Representation in reference to the apportionment, they have not been in harmony with each other and knowing that I have gone through the apportionment to see what could be done and to see whether the present number would do any wrong to the State.

The apportionment accepts the universal rule that every county shall have a representative and the apportionment in respect to any additional representatives and Senators is purely arbitrary. As a rule we take the population as a basis and approximate as near as we can so as to do the least injustice to any part of the State.

In going over these matters I have found that it is perfectly practicable to redistrict the State into 33 Senatorial districts without doing any gross injustice to any part of the State. I will say personally I have no interest in it at all except to do my duty. I notice in their apportionment they begin with the northern part of the State. I begin in the south, making Mobile with 62,740 as the First Senatorial District.

2. Washington, Baldwin, Escambia, Covington .....	50,994
3. Clarke, Monroe .....	51,456
4. Butler, Conecuh, Crenshaw .....	62,963
5. Coffee, Pike .....	50,144
6. Henry Geneva .....	55,243
7. Barbour, Dale .....	56,341
8. Bullock, Macon .....	55,070

9. Lee, Russell	58,909
10. Montgomery	72,047
11. Lowndes, Autauga	53,566
12. Dallas	54,657
13. Marengo, Choctaw	56,451
14. Wilcox	35,651
15. Pickens, Sumter	57,112
16. Hale, Greene	55,293
17. Perry, Bibb	50,281
18. Tuscaloosa, Fayette	50,260
19. Lamar, Marion, Franklin	47,089
20. Colbert, Lauderdale	47,900
21. Limestone, Lawrence, Winston	52,065
22. Madison	43,702
23. Morgan, Marshall	52,109
24. Jackson, DeKalb	54,066
25. St. Clair, Blount	42,544
26. Jefferson	140,420
27. Cullman, Walker	43,011
28. Calhoun, Cleburne	48,080
29. Cherokee, Etowah	48,457
30. Talladega, Clay	52,872
31. Shelby, Chilton, Coosa	55,950
32. Elmore, Tallapoosa	55,771
33. Randolph, Chambers	44,933

Now, as to the representatives. It is easy enough to apportion 100 representatives and is it not important to retain the same number you have now when no injustice will be done to any part of the State. It does not matter particularly if a county has but one representative. I am sure the county of Walker with the delegate who represents it on this floor will never suffer. A county with one representative may be better represented than one with two. It is only a question of numbers, and we take as a basis because we cannot get a better one, the population. I find, in looking over the counties, that the proposition of this Committee on Representation gives some counties an additional representative that have less population than others which are left with one representative. It is an easy matter for any one to see those who will look at it. I do not think it adds anything to the excellency of the law, nor do I think it detracts at all from the rights of the people whether a county has two or one representative. All of the representatives should be looking after the interests of the whole people. As between the two, I think it would be wiser to reduce the number

of representatives rather than increase them. I think it would result in good to the State to do it, but the committee for which I have the honor to speak, thought it was better to retain the present number and so reported.

MR. MALONE—I move the previous question on the amendment.

A vote being taken, the previous question was ordered, and a further vote being taken, the amendment was adopted.

The amendment offered by Mr. Jones, and which was declared out of order by the President, was again offered and again read.

MR. JONES (Montgomery)—On that I call for the previous question, and I ask for an aye and no vote.

MR. HEFLIN (Chambers)—I think that is not germane to the section, and I make the further point of order that this amendment is on the same line as the amendment offered by the gentleman from Jefferson.

THE PRESIDENT—The amendment offered by the gentleman from Montgomery seems to be similar to the amendment offered by the gentleman from Jefferson, although the chair is not prepared to say it is the identical amendment, and it seems to the chair it would be in order. It is for the convention to say whether they will fasten it on this section.

MR. BULGER—It seems to me that the amendment offered by the delegate from Jefferson includes this amendment, and if it does, this has been once voted on and is out of order.

MR. JONES—This is not the identical proposition, but if it were, the gentlemen would not be right in their contention. They confuse in their minds the effect of laying an amendment on the table and of indefinitely postponing, is *res adjudicata* and prevents you from bringing up that matter again, but when a matter is laid on the table you can bring up the matter at any time. I insist this is germane.

THE PRESIDENT—Is your amendment different from the amendment of the delegate from Jefferson?

MR. JONES—Yes; his amendment embraced two or three hundred other officers, and this amendment only includes the members of the General Assembly.

MR. BULGER—I will ask if members of the Legislature were not included in the other amendment.

MR. JONES—I expect they were, and every other officer in the State.

MR. BULGER—If they were, I suggest this is the same subject.

MR. REESE—I make the point of order that the chair has ruled that the amendment is in order.

THE PRESIDENT—It seems to the chair that if a proposition is presented and rejected by the Convention which is a broad proposition, it would be in order to present the proposition in a narrower form.

MR. WALKER—I call for the ayes and noes on this proposition.

MR. BULGER—I move to lay the amendment on the table.

MR. O'NEAL—On that I call for the ayes and noes.

The call was sustained and the original section as amended and the amendment of the delegate from Montgomery were read.

MR. JACKSON—Has the President decided this amendment is germane to the section?

THE PRESIDENT—The chair is in doubt on that point, but has given the benefit of the doubt in favor of the amendment. The question is on the motion to table the amendment offered by the gentleman from Montgomery.

The result of the roll call was as follows:

#### AYES.

Messrs. President,	Greer, of Calhoun,	O'Rear,
Barefield,	Greer, of Perry,	Parker (Cullman),
Bartlett,	Haley,	Pearce,
Blackwell,	Harrison,	Pitts,
Browne,	Heflin, of Chambers,	Porter,
Bulger,	Heflin, of Randolph,	Proctor,
Burnett,	Hinson,	Reynolds, of Henry,
Byars,	Hodges,	Rogers (Lowndes),
Cardon,	Inge,	Searcy,
Carmichael, of Colbert,	Jackson,	Sentell,
Carnathon,	Jones, of Wilcox,	Sloan,
Cofer,	Kirkland,	Smith (Mobile),
Coleman, of Greene,	Knight,	Sorrell,
Cornwall,	Long, of Walker,	Stewart,
Craig,	Macdonald,	Stoddard,
Davis, of DeKalb,	McMillan (Wilcox),	Thompson,
Davis, of Etowah,	Miller (Marengo),	Waddell,
Eyster,	NeSmith,	Weakley,
Ferguson,	O'Neill, of Jefferson,	Weatherly,
Foshee,	Opp,	Whiteside,



Willet,  
Williams (Barbour),  
Total—65.

Williams (Elmore),  
Wilson (Clarke),

Wilson (Wash'gton),

NOES.

Banks,  
Beddow,  
Boone,  
Brooks,  
Burns,  
Cobb,  
deGraffenreid,  
Duke,  
Eley,  
Espy,  
Fitts,  
Fletcher,  
Freeman,  
Glover,  
Graham, of Talladega,  
Grayson,  
Handley,  
Hood,  
Howze,  
Jones, of Bibb,  
Total—58.

Jones, of Hale,  
Jones, of Montgomery,  
Kirk,  
Leigh,  
Locklin,  
Lomax,  
McMillan, of Baldwin,  
Malone,  
Martin,  
Maxwell,  
Merrill,  
Miller (Wilcox),  
Moody,  
Murphree,  
Norman,  
Norwood,  
Oates,  
O'Neal (Lauderdale),  
Palmer,  
Parker (Elmore),

Pettus,  
Pillans,  
Reese,  
Robinson,  
Samford,  
Sanders,  
Sanford,  
Selheimer,  
Smith, Mac. A.,  
Smith, Morgan M.,  
Sollie,  
Spears,  
Spragins,  
Vaughan,  
Walker,  
Watts,  
White,  
Winn,

ABSENT OR NOT VOTING.

Almon,  
Altman,  
Ashcraft,  
Beavers,  
Bethune,  
Carmichael, of Coffee,  
Case,  
Cunningham,  
Coleman, of Walker,  
Dent,

Foster,  
Gilmore,  
Graham, of Montgomery,  
Grant,  
Henderson,  
Howell,  
King,  
Kyle,  
Ledbetter,  
Long, of Butler,

Lowe, of Jefferson,  
Lowe, of Lawrence,  
Morrissette,  
Mulkey,  
Phillips,  
Renfro,  
Reynolds (Chilton),  
Tayloe,

PAIRED.

AYE.

Rogers (Sumter) with  
Jenkins with

NOE.

Williams (Marengo)  
Chapman.

During the roll call Mr. Heflin of Chambers endeavored to explain his vote, but the house drowned his explanation with objections.

By a vote of 65 ayes and 58 noes the amendment was laid upon the table.

THE PRESIDENT—The question recurs upon the section as amended.

MR. OATES—I demand the previous question upon the section as amended.

MR. BURNS—I have an amendment.

THE PRESIDENT—Does the gentleman yield to the gentleman from Dallas?

MR. OATES—I must respectfully decline to yield for any further amendments.

Upon a vote being taken the main question was ordered, and upon a further vote the section as amended was adopted.

Section 8 was read as follows:

Sec. 8. The Senate at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members President thereof, to preside over the deliberations in the absence of the Lieutenant-Governor, and the House of Representatives at the beginning of each regular session and at such other time as may be necessary, shall elect one of its members as Speaker; and the President of the Senate and the Speaker of the House of Representatives shall hold their offices respectively until their successors are elected and qualified. In case of temporary disability of either of said presiding officers, the House to which he belongs may elect one of its members to preside over that House and to perform all the duties of such officer under disability during the continuance of the same; and such temporary officer, while performing duty as such shall receive only the same compensation to which the permanent officer is entitled by law. Each House shall choose its own officers and shall judge of the election returns and qualifications of its members.

MR. OATES—The amendments proposed by the Committee to this section as it stands, were to meet the supposed trouble resulting from the death of the Speaker or the disability for any cause of the Speaker or the presiding officer of the Senate. Nothing else. It simply confers the powers distinctively upon each House so that no question may be made thereafter upon the legality of its proceedings in passing laws. I move the previous question upon the adoption of the section.

MR. WILSON (Washington) here took the chair.

MR. REESE—I rise to ask the privilege of offering an amendment.

**THE PRESIDENT PRO TEM**—The gentleman from Dallas is out of order. The question is shall the main question be now put.

Upon a vote being taken a division being called for, by a vote of 62 ayes and 8 noes, the main question was ordered. Upon a further vote being taken the section was adopted.

Section 9 was read as follows:

Sec. 9. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members, in such manner and under such penalties as each House may provide.

**MR. OATES**—There is no change. That is the same as the present Constitution and move its adoption.

Upon a vote being taken the section was adopted.

Section 10 was read as follows:

Sec. 10. Each House shall have power to determine the rule of its proceedings, and to punish its members or other persons for contempt or disorderly behavior in its presence; to enforce obedience to its process; to protect its members against violence, or offers of bribe or corrupt solicitation; and with the concurrence of two-thirds of either House to expel a member, but not a second time for the same offense; and shall have all the powers necessary for the legislature of a free State.

**MR. OATES**—The only change that has been made in this section is in substituting the word "offense" in the fifth line in place of the word "cause."

Upon a vote being taken the section was adopted.

Section 11 was read as follows:

Sec. 11. A member of either House expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

**MR. OATES**—That is the same as in the present Constitution, and I move its adoption.

Upon a vote being taken the Section was adopted.

Section 12 was read as follows:

Sec. 12. Each House shall keep a Journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either House on any

question shall, at the desire of one-tenth of the members present, be entered on the Journal. Any member of either House shall have liberty to dissent from or protest against any Act or Resolution which he may think injurious to the public, or an individual, and have the reasons for his dissent entered on the Journal.

MR. SANFORD (Montgomery)—I offer an amendment to that Section.

The amendment was read as follows:

Amend Section 12 by adding the words, "but the journals of the Senate and House of Representatives shall not be held by the courts to import absolute verity, but their truthfulness may be inquired into like any other statement in a court of justice."

MR. CHAPMAN—I move to lay the amendment on the table.

MR. SANFORD—Mr. President, I have the floor.

THE PRESIDENT PRO TEM—The gentleman from Montgomery has the floor.

MR. SANFORD (Montgomery)—Mr. President, I offer that amendment because, according to the statement made by a distinguished member of this Convention, many laws were passed during the last seven months that did not comply with the requirements of the Constitution. The laws were not read at length as the present Constitution requires. The roll of the member of each House was not called, according to the demands of the present Constitution, and the journals recited that bills were read three times, and that the rolls were properly called, and every prerequisite of a valid law was complied with, and yet it was a fact well known to many members of the Legislature that it stated an absolute untruth. I saw it myself upon one occasion where a bill was introduced containing upwards of twenty-five thousand words. The Constitution required that on the day or night of its passage it should be read at length. The whole bill was completed, with twenty odd amendments, in less than half an hour, when the very reading of the bill, if read at the rate of 100 words to the minute, would have required four hours, and when I complained to the Journal Clerk or to the Clerk of the House that it was not read, he replied that I could not go behind the Journal. I am aware of the decisions of the Supreme Court in this State, and in other States with regard to this point, but as was said with great power and earnestness by the gentleman from Crenshaw in arguing a case a few days ago, it impressed me then, that for the purpose of avoiding such a rushing through of legislation, such an amendment as I have offered should be passed by this Convention.

The truth is that while it was said that the Convention should be held to eliminate the negro from politics, and to purify

the suffrage, I voted to hold this Convention also in order that the Legislature might be compelled by some process to obey the Constitution of this State. Under the present system, the manner of enacting laws is infinitely worse than the negro suffrage, for it affects every man in the State of Alabama. It is vastly important that there should be some change in this technical rule that the courts cannot go behind the Journal. Our courts have gone further than other courts and have held that while there may be positive requirements in the Constitution that certain things must be done by the Legislature, it is presumed that they were done unless the Journal sets forth they were not done, always presuming upon the infallibility of the Legislature, its good faith, and its fidelity, when the history of Alabama and the history of all legislation shows that it is a very violent presumption. I hope that this amendment will be adopted by the Convention. It is absolutely necessary, first, that the bills should be read, and that I think is already provided for by the Committee on the Legislative Department. It was a fact well known as you all heard the gentleman from Crenshaw say a few days ago, that laws were passed in the House when there were not more than a dozen members present, and yet the Journal will show that the bill was read three times, and the roll was called, and I suspect that certain names were put down. Men have denied that they voted upon certain bills, and yet they were put down and mentioned as having voted for them. These are facts known by all men who attended upon the Legislature. Another man said to me, I heard fifty-six bills pass, not one of which was read, and no roll was properly called. Another gentleman, when I complained of it to Senators, and said to him, in the other House they are passing bills without even reading them, and sir, they are doing the same thing here in the Senate, and yet the Journals of each House will show that the bills were properly read and that the rolls were properly called, and that every prerequisite was complied with that the Constitution demanded should be observed in the enactment of laws, and that is the character of some of the legislation that happened in the last ten months, and it is to protest and prevent a repetition of such instances that I have introduced this amendment.

The President resumed the chair.

MR. OATES—The complaint made by the gentleman from Montgomery and his amendment directed to it, so far as these defects can be remedied, they are remedied in this article further on, and I now renew the motion made by the delegate from Sumter a moment ago to table—

Mr. Knight sought recognition.

MR. OATES—For the purpose of allowing the gentleman from Hale to make a statement I withdraw the motion.

MR. KNIGHT—I feel called upon, as a member of the last Legislature, to contradict the statement made by the gentleman from Montgomery. I was a member of and a regular attendant upon the last House, and never saw in the whole session of the Legislature a bill passed when it was not thought there was a quorum present. If there was not a quorum present it had not been discovered.

MR. SANFORD (Montgomery)—I said that Mr. Sentell made the statement. The gentleman from Crenshaw made the statement that bills were passed here when there were not more than a dozen members upon the floor.

MR. KNIGHT—Well, sir, I dispute it most emphatically.

MR. SANFORD—He said that in a speech here last Monday.

MR. KNIGHT—I most emphatically dispute it, and say that it was not the case.

MR. SANFORD (Montgomery)—If it a question between you, sir, and the gentleman from Crenshaw.

Upon a vote being taken the motion to table the amendment was carried.

MR. FREEMAN—I offer an amendment.

The amendment was read as follows: Amend Section 12 by striking out in the second line of said section, after the word “adjournment,” down to and including the word “secrecy” in the third line.

MR. GREER (Calhoun)—I move to lay the amendment on the table.

Upon a vote being taken the motion to table prevailed, and upon a further vote the section was adopted.

Section 13 was read as follows:

Sec. 13. Members of the Legislature shall in all cases except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same, and for any speech or debate in either House they shall not be questioned in any other place.

MR. OATES—That is the same as in the present Constitution.

Upon a vote being taken the section was adopted.

Section 14 was read as follows:

**Sec. 14.** The doors of each House shall be opened except on such occasions as, in the opinion of the house, may require secrecy, but no person shall be admitted to the floor of either House while the same is in session except members of the Legislature, the officers and employes of the two Houses, the Governor and his secretaries, representatives of the press, and such other persons to whom either House by unanimous vote may extend the privilege of its floor.

MR. HEFLIN (Randolph)—I desire to offer an amendment.

The amendment was read as follows:

Amend Section 14 by striking out the word "unanimous" in the fifth line and insert in lieu thereof the words "and majority."

MR. HEFLIN (Randolph)—If this Section is adopted as reported by the Committee, one member of the House of Representatives might thwart the will of 104 members, and one member of the Senate might thwart the will of thirty-four, and I insist, Mr. President, it is undemocratic, and believing in the doctrine that a majority should rule, on all question, I hope that this amendment will be adopted.

MR. OATES—The delegate's doctrine is wholly inapplicable and his amendment wholly unnecessary, and I think it can be seen. The emendation of this Section from the way it stood before, is simply to clothe each House of the Legislature with the power easily to protect itself from the encroachment of outsiders. Now, sir, under the rules enforced heretofore, men have had a delicacy of feeling about excluding persons who intrude, and I say it regretfully, but I have seen men in among the Representatives and Senators taking seats among them and buttonholing them to get them to vote for some job or a scheme which they may feel an interest in. This is for the protection of the members of each House, and the amendment looks to a mere majority vote to turn in anybody and everybody. Why, sir, in the future I presume we will not all continue to be practically of one political party. Take the case where parties are pretty equally divided, one party of course will predominate over the other, and that party could vote unanimously together every time and admit to the privileges of the floor all that they saw proper, who would be their own party associates, and exclude everybody else. Unless it be by a unanimous vote, to extend to any one the honor and privileges of the floor, they should not have it. It is quite an honor to any one, and it is extended usually only to distinguished personages, men who have made a record after long and patient service. Otherwise bodies of this kind do not hurry to extend the privileges to every one but if a motion be made to admit to the privileges of the floor any person who is worthy of it, it would be the rarest of occurrences that one

might look for that any member of either House will get up and object to it.

MR. HEFLIN (Randolph)—I would like to ask the gentleman if one member of either House on account of political prejudice or for any other reason, could not deny the President of the United States or one of our own Senators, or any other distinguished gentleman, the privileges of the floor?

MR. OATES—I do not think that any one would have the cheek to do that.

MR. HEFLIN (Randolph)—But answer the question. Could they do it?

MR. OATES—Oh, they could, but I do not wish to make any exceptions. The Committee did not see proper to do it. We knew we had it from unmistakable authority that each House had been invaded and it was the habit to admit every one and any one who saw fit to come in, and mix among the members. Why, sir, a member should be exempt from that kind of solicitation. We have in the present Constitution one or two sections against corrupt solicitation, and many times there is too much solicitation, too much anxiety upon the part of those who come into the legislative halls, and if we only knew it there is corruption connected with it. It is not easily proven, however. Each body ought to be able to protect itself from these intrusions. In fact talk about its being a Democratic principal, no man has a right upon the floor of either House, when that House is in session, unless he be invited there. Exceptions have been made in favor of the representatives of the press, the Governor and his secretaries, and the officers and members of each House, and that is going far enough. Why, sir, you go to the Congress of the United States. There outsiders are not tolerated to come in on the floor. There is a gallery for them. They can go look down, just as they may here, and witness the proceedings. It is too altogether democratic if it may be called such. The practice of people rushing as heretofore, into the lobby, is wrong, and men who have served in this hall and in the other house know that the most frequent cause of disturbance is from outsiders in the lobby, carrying on a conversation that interferes with proper deliberation. My friend, the delegate from Randolph, is mistaken. He is carrying his democracy a little too far in this connection. I know his democracy usually is first-class and no one has more respect for the opinions of the delegate than I have, but in this case—

MR. HEFLIN (Randolph)—I would like to ask the gentleman if my Democracy is not always first class?

MR. OATES—I have always found it such. I now move to lay the amendment on the table.



MR. HEFLIN (Randolph)—On that I call for the ayes and noes.

The call was not sustained.

THE PRESIDENT—The question is on the motion to table the amendment offered by the gentleman from Randolph.

Upon a vote being taken, a division was called for, and by a vote of sixty ayes and thirty-two noes, the motion to table prevailed.

MR. PETTUS—I desire to offer an amendment.

MR. OATES—I move the previous question on the section.

MR. PETTUS—I ask the gentleman to yield for an amendment.

MR. OATES—My friend was a member of the committee and had ample opportunity to amend.

Upon a vote being taken, the main question was ordered, and upon a further vote, the section was adopted.

Section 15 was read as follows:

Sec. 15. Neither House shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

MR. OATES—That is the same as in the present Constitution.

Upon a vote being taken, the section was adopted.

Section 16 was read as follows:

Sec. 16. No Senator or Representative shall during the term for which he shall during the term for which he shall have been elected, be apponited to any office of profit under this State, which shall have been created, or the emoluments of which have been increased during such term except such offices as may be filled by election by the people.

MR. O'NEAL—I have an amendment I desire to offer.

The amendment was read as follows:

"Amend Section 16 by striking out all of said section which follows the word State in the second line."

MR. O'NEAL—The amendment would leave the section to read as follows: "No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this State."

It simply prohibits a member of the Legislature from being appointed to any office, whether it is created by the Legislature or not, while he is a member.

THE PRESIDENT—The same question was presented on the report of the Committee on Executive Department.

MR. OATES—It was, Mr. President. I will say that the only changes made in this, and the only difference at all from the way it stands in the present Constitution, is so as to make the language more easily understood, not requiring any effort to fully comprehend it. As it reads here, it is quite plain. If a gentleman is a member of the House or Senate, and some Circuit Judge should die, the Governor could, if the authority were vested in him, appoint that member of the Legislature for the unexpired term. That is an office not created by the Legislature during the term of such member, or the emoluments of which have been increased during his term. The member has had no connection with it, no more than any other citizen of the State.

THE PRESIDENT—The chair will invite the attention of the delegate from Montgomery to the amendment offered by the gentleman from Lauderdale and inquire if it is not the same proposition that was passed upon and decided by this Convention when the report of the Committee on Executive Department was under consideration.

MR. OATES—I think it is substantially the same and I think it is subject to a point of order, for the reason that it was considered and voted down.

MR. O'NEAL (Lauderdale)—I have not the book with me, but it is laid down in Roberts' Parliamentary Law that the same amendment can be offered to different sections. It is clearly laid down in that work.

THE PRESIDENT—And the Convention could be required to vote upon the same proposition on every Section of the Constitution?

MR. O'NEAL (Lauderdale)—It could on the authority of that book.

THE PRESIDENT—In the opinion of the Chair, after the Convention deliberately considers a proposition and votes upon it, that question ought to be considered as concluded unless there is a motion for its reconsideration. The Chair, however, will say to the gentleman—

MR. deGRAFFENREID—I want to be heard one moment upon that point of order.

THE PRESIDENT—Certainly. The Chair will be glad to hear the gentleman.

MR. deGRAFFENREID—It seems to me that the position taken by the gentleman from Lauderdale is the correct one. For instance, only a few moments ago the Convention tabled the amendment which was offered to a Section with reference to the issuance of free passes by railroads. The Chair stated to the Convention upon an inquiry, that he was in doubt as to whether that amendment was germane to the Section. Now I happen to know that there are members of this Convention who voted to lay that resolution upon the table because they thought it was not germane to the particular Section then under consideration.

THE PRESIDENT—That is not the point now before the Convention.

MR. deGRAFFENREID—But I want to see if I can not bring the Chair to the consideration of the question that is before the Convention. It is possible that the Convention has voted down the same amendment, offered to some other Section of some other Article, but some members may have been actuated in so voting without expressing themselves upon the idea, that the amendment as offered to that Section was not germane to the subject, when in fact they favored the proposition itself. So it seems, if that be true, the same amendment might be offered to different sections, and for that reason it seems to me that the point made by the gentleman from Lauderdale is unanswerable.

MR. HEFLIN (Chambers)—I move to lay amendment on the table.

THE PRESIDENT—In the opinion of the Chair where the same proposition is offered, it is not in order, otherwise this same amendment could be offered to every Section as we proceed. The Chair did rule a while ago that the amendment was proper, and overruled the point of order, but the Chair, upon reflection, is of the opinion that he ruled erroneously at that time, for the reason, as suggested by the gentleman who made the point of order, that the identical proposition was included in the proposition offered by the gentleman from Jefferson, and the proper way for the gentleman from Montgomery to have presented that question was on a motion to strike out, and he lost his right when he omitted to make his motion to strike out so as to present his question on the resolution offered by the gentleman from Jefferson. But the Chair did rule, it now thinks, improperly, that the Convention was entitled to vote upon that amendment. The Convention did vote upon it, but here is the identical proposition which was presented on the report the other day. No point is made against it that it is not germane. That is not the point at all. The question is shall the Convention be forced to vote upon it a second time without a reconsideration. In the opinion of the Chair the amendment is not in order.

The clock struck 6.

MR. HEFLIN (Chambers) — A point of order. Under the rules, this Convention stands adjourned.

Leaves of absence were granted to Mr. Sanders for Monday and Tuesday, Mr. Bethune for Thursday, Friday and Saturday, and Mr. Bartlett for Thursday, Friday and Saturday.

And thereupon the Convention adjourned.

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## FORTY-EIGHTH DAY

MONTGOMERY, ALA.,

Thursday, July, 18, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. C. B. McDaniel as follows:

Almighty God, we beseech Thee to grant unto these Thy servants, set apart to the office and work of this State, Thy richest blessings, that faithfully fulfilling their course, at the last day each one may receive a crown of righteousness laid up by the Lord, the righteous Judge. We pray for our loved ones who are not present with us. Be with all in authority, with all rulers, Governors, Judges, Magistrates, and persons in authority, with all who direct our thinking and lead our sentiments, and grant unto every man the assurance that his work is blest from on High. Assist us, O Lord, in all our doings, with Thy most gracious favor, and further us with Thy continued help that in all our works begun, continued and ended in Thee, we may glorify Thy holy name, and finally by Thy mercy, obtain everlasting life, through Jesus Christ, our Lord. Amen.

Upon the call of the roll 106 delegates responded to their names.

MR. WILLIAMS (Marengo) — The stenographic report in the record of two of the votes show Mr. Rogers (Sumter) and myself as absent or not voting, when as a matter of fact we were paired. The record of the third vote of the afternoon session shows the pair properly at the end of it, and it strikes me the pair should be shown as in the third record of the vote, and not have us absent and not voting when as a matter of fact we were paired, which means a vote.

THE PRESIDENT—The stenographer is requested to note the pair.

MR. O'NEAL—At the proper time I desire to be heard further on the point of order raised yesterday, and some authorities which I desire to present to the Chair to call his attention to the difference between the section as reported by the Legislative Committee and the section on which the Convention has already acted on Executive Department—they are entirely different in their language and meaning in some respects. Will the Chair hear me now?

THE PRESIDENT—If the gentleman will send up the authorities that he has the Chair will examine them.

MR. SENTELL—I rise to a point of personal privilege.

THE PRESIDENT—The gentleman will state the point of personal privilege.

MR. SENTELL—Judging from the controversy on the floor of the Convention on yesterday in which some remarks I had made were referred to, I think the remarks I made were misunderstood by some gentlemen. All that I have to say in regard to the acts of the Legislature I said on last Monday in the discussion of the question regarding the Shelby County Court House. By referring to those remarks it will be found that I said that local bills often passed at night sessions when not more than two dozen members were on the floor taking part. I want it understood that I did not make those remarks in regard to the general acts and working of the Legislature at all, because when general bills were under discussion they were always read in full, and the roll always called slowly, so that every man could vote and be recorded. It was only at night sessions when the calendar was very heavy we passed over the work so rapidly this was resorted to, and it was really necessary in order to get through with the calendar. What I wish to state is that even at these night sessions a quorum was always recorded at the beginning of the session, then the members retired to the cloak room, some to the library and some even left the Capitol, and those local bills were continued to be passed unless the question of no quorum was raised, and not more than two dozen members were often present on the floor. Of course, if the question of no quorum had been raised the members would have been hunted up. The statement made by the gentleman from Montgomery was that I stated that no roll call was called, and no bill read. By reference to my remarks on Monday it will be seen what I did say.

MR. COLEMAN (Greene) — I desire to make a statement with reference to the remark of the Chairman of the Committee on County Boundaries on yesterday. I do not wish the people that I represent to be misled, nor do I wish to be credited with more magnanimity than I deserve. Greene county is so situated it has less population than any of the adjacent counties, and could not

be placed more advantageously Senatorially, and upon examination I find that to increase the representation of Greene county would be to visit upon some other county a greater injury than that which we have sustained. Therefore I did not object to the apportionment made by the chairman.

The Committee on Journal reported that they had examined the journal for the forty-seventh day and found the same to be correct. On motion the report of the committee was adopted.

MR. SMITH (Mobile)—I am instructed by the Rules Committee to report a resolution favorably.

The Clerk read the resolution as follows:

Resolved, That each delegate may speak ten minutes, and no longer, upon any motion to reconsider the action of the Convention upon any matter upon which it has acted.

MR. SMITH—I move the adoption of the resolution.

A vote being taken, the resolution was adopted.

The next order of business was the call of the roll for the introduction of ordinances, resolutions, etc.

MR. CORNWALL—Mr. President, I have an ordinance I desire to introduce.

The clerk read the ordinance as follows:

Ordinance 420 by Mr. Cornwall:

Whereas, the people have at all times the right of local self-government a principle which forms one of the most treasured tenets of the Democratic party, and whereas, the object of the establishment of all local governmental units, such as counties, municipalities, precincts or beats and special school districts, is the benefit and welfare of the people within the particular local area, and whereas this convention has the power and authority to create and establish counties and to fix and arrange county boundaries wherever the necessities become apparent and

Whereas, there is a great and pressing need for the establishment of a new county in the lower portion of the present county of Jefferson, and

Whereas, all conditions as to population, property valuations, diversity of pursuits and area, exist in the proposed county, the contiguous counties being left with all of the requirements for counties under the law, and

Whereas, in the formation of said proposed new county due and fitting honor could be done the memory of George S. Houston, the great leader of the State Democracy in conferring his name thereon, now, therefore,

Be it ordained by the State of Alabama in Convention Assembled:

1. That there is hereby created and established a new county to be called and known by the name of "Houston," to have all of the rights and privileges of counties in this State, with the following described boundaries, viz: Beginning at the intersection of the south line of Township 18, south; Range 2, west, and the west bank of the Cahaba River, running thence west to the range line between Ranges 2 and 3, west; thence north two miles on said range line; thence north two miles on said range line to the southwest corner of Section 19, Township 18, south, Range 2, west; thence west five miles to the southwest corner of Section 20, Township 18, south, Range 3, west; thence north one mile to the northeast corner of Section 19, Township 18, south, Range 3, west; thence west one mile to the northeast corner of said Section 19; thence north one mile to the northwest corner of Section 18, Township 18, south, range 3, west; thence west three miles to the southwest corner of Section 10, Township 18, south, Range 4, west; thence north two miles to the township line between Townships 17 and 18 south, Range 4, west, and at the northwest corner of Section 3, Township 18, Range 4, west; thence west three miles to the range line between Ranges 4 and 5 west, and at the southwest corner of Section 31, Township 17, south, Range 4, west; thence north on said range line three miles to the northeast corner of Section 24, Township 17, south, range 5, west, thence west to the east bank of Locust Fork of the Black Warrior River; thence in a southwesterly direction, following the meanderings of said Locust Fork of the Black Warrior River and of the Black Warrior River to the intersection of Black Warrior River with the township line between Townships 18 and 19, south, range 8, west; thence east to the northeast corner of Section 5, Township 19, south, range 7, west; thence south two miles to the southwest corner of Section 9, Township 19, south, range 7, west; thence east two miles to the northeast corner of Section 15, Township 19, south, range 7, west; thence south two miles to the southwest corner of Section 23, Township 19, south, Range 7, west; thence east two miles to the range line between Ranges 7 and 6 and at the southwest corner of Section 19, Township 19, south, Range 6, west; thence south two miles to the southwest corner of Section 31, Township 19, south, Range 6, west; thence east two miles to the northeast corner of Section 5, Township 20, south, Range 6, west; thence south two miles to the southwest corner of Section 9, township 20, south, Range 6, west; thence east two miles to the northeast corner of Section 16, Township 20, south, Range 6, west; thence south two miles to the southwest corner of Section 23, Township 20, south, Range 6, west; thence east two miles to the range line between Ranges 5 and 6 west, and at the southwest corner of Section 19, Township 20, south, Range 5, west; thence south on said range line between Ranges 5 and 6, four miles to the southwest corner of Section 7, Township 21, south, range 5, west; thence east seven miles to the southeast corner of Section 7, Township 21, Range 4, west; thence north to the present boundary line between Jefferson and Shelby Counties, thence in a northeasterly direction following the present boundary lines between Jefferson and Shelby Counties to the place of beginning, and containing 445 1-4 square miles.

Sec. 2. The county seat of the new county of Houston shall be the city of Bessemer.

Sec. 3. That Jacob Kimball, Dr. J. B. Viles, J. V. Huey, Chambers McAdory, Dr. M. C. Ragsdall and H. W. Crook be and the same are hereby appointed a Board of Commissioners for the performance of the duties and exercise of the powers hereinafter enjoined and conferred upon them; a majority of said board may act and may fill all vacancies therein.

Sec. 4. That said Board of Commissioners are hereby empowered and directed to divide said county into election precincts, to the best convenience of the people, and to designate the place of voting therein, as soon as practicable, and to give notice of the boundaries of said precincts and place of voting therein by publication in some newspaper published in said county, for at least twenty days previous to the election hereinafter provided for. That said Board shall hold an election for the election of county officers on Tuesday the fourth day of February, 1902, in said county by giving at least thirty days notice thereof, by advertisement in some newspaper published in said county. That said commissioners are empowered to appoint three (3) inspectors and one returning officer for each election precinct in said county to hold said election, who shall be governed in their duties by the laws regulating elections in this State. That said returning officers shall make their returns to said Board of Commissioners, at Bessemer, Alabama, within three days after said election; that the said Board of Commissioners after duly counting the votes shall make certified returns thereof to the Governor of Alabama within ten days after the day of election; that within ten days thereafter, the Governor, Secretary of State and Auditor shall count the votes and the Governor shall issue commissions to those persons who shall have received the highest number of votes as county officers.

Sec. 5. That the county officers to be elected at said election shall be one (1) probate judge, one (1) circuit clerk, one (1) sheriff, one (1) tax assessor, one (1) tax collector, one (1) treasurer, one (1) county superintendent of education, one (1) coroner and four (4) county commissioners, who shall hold their respective offices until the next general election for State and county officers and until their successors are elected and qualified.

Sec. 6. That until the next apportionment of representatives, the said county of Houston shall be entitled to one representative, which representative shall be taken from Jefferson County's number.

Sec. 7. That the County of Houston be and is hereby attached to the Ninth Congressional District and Eighteenth Senatorial District, and shall form part and parcel of the Tenth Judicial Circuit and the Northwestern Chancery Division until otherwise provided by law, and that the present city court of Bessemer shall have and exercise all the jurisdiction and power, within and over the entire county of Houston, which now are or may hereafter be by law conferred on the several Circuit and Chancery Courts of the State, and that the Justices of the Peace and Notaries Public, and Notaries Public, ex officio Justices of the Peace, and Constables located in said territory embraced in the limits of Houston county shall continue in office until



their successors shall have been appointed and qualified; provided, however, that from and after the time this ordinance goes into effect they shall be confined and limited in their official capacity, duty and power to said limits of Houston county.

Sec. 8.—That from and after the first day of March, 1902, all suits pending in the courts of the counties of which the defendant resides in that portion of the county now established as the county of Houston, and all indictments pending in the counties of Jefferson and Tuscaloosa and Bibb, where the offense was committed in territory of said county now established as the county of Houston, shall be transferred to the calendar courts of the said county of Houston; and all records, commissions and other papers belonging to any of the suits or indictments, together with all legal indictments thereto appertaining, shall be transferred to the clerk of the court of the said county of Houston.

Sec. 9.—That the Governor be and he is hereby empowered to appoint a commission of five persons, one of whom shall be a resident of each of the counties of Jefferson, Tuscaloosa, Bibb, and two residents of the new county of Houston, which said commission shall divide and apportion between the counties herein provided for the present lawful bona fide indebtedness of the old counties hereinbefore mentioned, having regard for public buildings and other permanent improvements remaining in the old counties.

Sec. 10.—That the compensation of each of the commissioners in this ordinance mentioned in sections 3 and 8 shall be \$5 per day for each day actually employed, to be paid out of the treasury of the new county.

MR. O'NEAL (Lauderdale)—I want a correction made in the stenographic report of yesterday. Some words have been omitted in my argument. I have corrected the inaccuracies and will hand them to the stenographer.

MR. DAVIS (Etowah)—I have a resolution I wish to offer.

The Clerk read the resolution as follows:

Resolution No. 251, by Mr. Davis of Etowah:

Whereas, This Convention has just received an invitation to move its place of deliberation to Bellevue Hotel on Lookout Mountain, overlooking Gadsden, Ala., where the temperature never goes above 85 degrees Fahrenheit, and with ample room to accommodate all the members and employees of this Convention and

Whereas, This Convention has recently experienced a temperature of 105 degrees in the hall of the House of Representatives:

Therefore, Be it resolved, That after Saturday, the 20th day of July, this Convention do adjourn to meet on Monday the 22d day of July, at said Bellevue Hotel, there to continue its deliberations.

Referred to Committee on Judiciary.

THE PRESIDENT—To what committee would the gentleman like to have that referred?

Several delegates suggested the Judiciary Committee.

THE PRESIDENT—It will be referred to the Judiciary Committee.

MR. HOWELL (Cleburne)—I have a resolution I desire to offer.

The Clerk read the resolution as follows:

Resolution No. 252, by Mr. Howell:

Whereas, It is always becoming in any people to give expressions of gratitude to the Giver of all Good.

Be it therefore resolved, That we for ourselves and in behalf of all the people of the State, whom we represent, that our sincere and devout thanks are offered up to the benign Giver of every blessing, for the welcome and copious showers of rain which are falling all over the State, that there will be "bread for the eater and seed for the sower."

THE PRESIDENT—To what committee would the gentleman like to have that resolution referred?

MR. HOWELL—I move to suspend the rules that it may be placed upon its immediate passage.

A vote being taken, the rules were suspended.

THE PRESIDENT—The question recurs on the resolution of the gentleman from Cleburne.

MR. HOWELL—We, as a Christian people, recognize the Divine Hand in all the events of this life. We are taught in His word, which is the religious textbook, that everything good and perfect comes from the Father of Life, and that it is but meet and right that we should not only feel in our hearts a sense of gratitude for spiritual blessings, but for the temporal blessings of life as well, and it has occurred to me that it would be becoming in this Convention, as the representatives of a great Christian people, to give expression in our own behalf and in behalf of our people, of our gratitude to Him from Whom all these blessings cometh. Our people for days and weeks have been nervous and anxious that there might come rain to give bread to the eater and seed to the sower, and, therefore, I move the adoption of this resolution.

A vote being taken, the resolution was unanimously adopted.

MR. SANFORD (Montgomery)—I desire to introduce an ordinance.

The clerk read the ordinance as follows :

Ordinance No. 421, by Mr. Sanford :

Be it ordained by the people of Alabama in convention assembled, That when two or more corporations shall hereafter conduct their business or employment, or any part of the same, in combination, or jointly, through the same agent, or through different agencies or citizens, in the performance of, or in consequence of any agreement, or combination, or understanding between such corporations, that they will jointly or mutually share in the advantage, benefit or profit, or in the loss to them, or any of them, that may incur in their business or employment, or in any part thereof, the holders of stock in any of such corporations shall thereupon and thereafter be liable, as co-partners, for all existing and future debts, obligations, liabilities of each and all of such corporations, to any other persons or corporations, or to the State of Alabama; and for all fines and emercements lawfully imposed upon such corporations; provided, that such joint agreements may be authorized by special acts of the Legislature, in which the same are clearly and fully set forth in their terms, stipulations and provision.

MR. SANFORD (Montgomery)—I ask that that ordinance be referred to the Committee on Legislative Department.

THE PRESIDENT—It seems to the chair that the matters it deals with should properly be referred to the Committee on Corporations.

MR. SANFORD (Montgomery)—But I ask that it be referred to the Committee on Legislative Department.

THE PRESIDENT—In deference to the request of the gentleman from Montgomery, the ordinance will be referred to the Committee on Legislative Department.

MR. BROWNE—The Committee on Taxation instructs me to report the following.

The clerk read the report as follows :

Mr. President :

The Committee on Taxation instructs me to report the following proviso to Section 10 of Article XI, viz. :

Provided, This section shall not apply to the cities of Sheffield and Tuscumbia.

And the following additional section to said Article viz. :

Section 11. The Legislature may levy a tax of not more than two and one-half per centum (2 1-2) on every one hundred (\$100) dollars of the value of all estate, real, personal and mixed, money, public and private securities of every kind passing from any person who may die, seized and possessed thereof, being in this State or any part of estate, money or securities, or interest therein transferred by the interstate laws of this State, or by will, deed, grant, bargain, sale or gift, made or intended to take effect in possession after the death of the grantor, deviser or donor to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brothers, sisters, children or lineal descendants of the grantor, deviser, donor or intestate.

And recommend the adoption of the same.

Respectfully submitted,

Cecil Browne,

Chairman Committee on Taxation.

MR. BROWNE—I move that the report be laid upon the table and printed and be taken up in connection with the report of the Committee on Taxation.

THE PRESIDENT—The ordinance amending the report will lie upon the table and be printed.

THE PRESIDENT—The next order of business will be the special order. Consideration of the report of the Committee on Legislative Department.

MR. JONES (Montgomery)—I rise to a question of the privileges of the Convention.

THE PRESIDENT—The gentleman from Montgomery will state his question of privilege.

MR. JONES (Montgomery)—On yesterday during the debate on the free pass amendment, I am told by members of the Convention that gentlemen who were not entitled to the privileges of the floor were here lobbying, and I therefore ask that the door keeper be instructed to enforce the rules of this Convention as to the admission of persons to this floor.

THE PRESIDENT—The door-keeper will be so instructed.

MR. O'NEAL—On yesterday I offered an amendment which the Chair ruled out of order on the ground the Convention had already acted on the same proposition when the report of the Committee on Executive Department was under consideration. I desire to call the attention of the Chair to the proposition which was under consideration. In the report of the Executive Depart-

ment, Section 20, are the following words: "The Governor shall not appoint any member of the General Assembly during the term for which he shall have been elected to any office." That was a prohibition on the Governor to appoint any member of the General Assembly, whether it was an office of profit or trust or not. Under that prohibition, he could not appoint a member of the legislature to an office of honor.. Now, the provision in Section 16 is: "No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this State." Now, if we concede that the Chair is correct in his ruling on the point of order, to which I beg to dissent, that the House cannot act twice on the same amendment, I submit respectfully to the Chair that this is an entirely new proposition. The House declined to accept the amendment, declined to adopt this provision because it was far reaching in its effects and prevented the Governor appointing a member of the General Assembly to a small office of honor in this State—the office of notary public, or commissioner to represent the State at some industrial exposition, or any position of honor—

MR. HARRISON — I rise to state that gentlemen in this neighborhood do not hear a word that the gentleman is saying.

MR. WADDELL—I rise to a point of parliamentary inquiry.

THE PRESIDENT—State the point of parliamentary inquiry.

MR. WADDELL—The question before the House? We cannot hear.

THE PRESIDENT—The gentleman is applying for a re-hearing.

MR. O'NEAL—Appealing for a re-hearing from the Chair.

MR. BOONE—Will the re-hearing take the usual course?

THE PRESIDENT—In all probability.

MR. O'NEAL—Now, the Chair on yesterday, as I state, held the amendment I offered was identical with the amendment or proposition which this House had voted down when the report of the Committee on Executive Department was under consideration. The Section in the report of the Executive Department, on which this Convention has acted, was in the following language: 'The Governor shall not appoint any member of the General Assembly during the term for which he shall have been elected to any office—

MR. BULGER—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. BULGER — There is no pending question before the House. There is no motion under which the gentleman can make a speech or argument.

MR. O'NEAL—Does the gentleman say I have no right to call the attention of the Chair to the facts in reference to a proposition before the House? The Chair on yesterday ruled two amendments were identical, and the Chair did not have the two articles at the time, and I know if the Chair was mistaken, he would correct himself. The Chair did not have the benefit of the two amendments, and I want to call the attention of the Chair to the fact that the amendments are entirely different.

MR. BULGER—I insist on the point of order, there is nothing before the House. The gentleman has made no motion, nor does he rise to a question of personal privilege to allow him to take up the time of this Convention in a speech this morning.

THE PRESIDENT—The Chair would be pleased to hear the gentleman from Lauderdale, the Chair is always glad to hear him, but it seems to the Chair that the point of order is well taken. There is nothing before the Convention.

MR. O'NEAL—My amendment is before the Convention, Mr. President, and I ask the ruling of the Chair on that proposition.

THE PRESIDENT—The Chair does not understand that the gentleman has re-offered the amendment.

MR. O'NEAL—I offer the amendment now. I desire to say that at the time the hour of adjournment struck before I had an opportunity of making reply to the statement of the Chair. I thought certainly I would have the privilege this morning.

MR. OATES—It is entirely discretionary with the Chair to hear a member under the circumstances, and no member by a point of order can take him off the floor, it is discretionary with the Chair to hear the gentleman or not.

THE PRESIDENT—The Chair will hear the gentleman in view of the suggestion of the gentleman from Montgomery, it seems reasonable. As the matter is important, the Chair will hear the gentleman briefly.

MR. O'NEAL—I just wish to say these are not similar propositions. The proposition we acted upon when the report of the Committee on Executive Department was under consideration was whether the Governor could appoint a member of the Legislature to any office whether of profit or not. Now, my amendment says the Governor shall not appoint a member of the Legislature to an office of profit under this State—an entirely different proposition. I say that parliamentary practice lays down the proposition on the

subject of amendments: an amendment may be in any of the following forms, to add or insert certain words or paragraphs and if this fails, it does not preclude any other amendment than the identical one that has been rejected. I say it is not the identical amendment. "To add, or strike out certain words, and insert certain others, and if lost it does not preclude a motion to strike out the same words and insert different words." Now, the other objection which I make to the ruling of the Chair, on the point of order, is that it is a matter for the Convention and not for the Chair. The rule as laid down in Cushing's Manual is that "the inconsistency or incompatibility of a proposed amendment with one which has already been adopted is a fit ground for its rejection by the Assembly, but not for the suppression of it by the presiding officer, as against order." That proposition is also laid down in Jefferson's Manual, and I submit that when this question was before the Convention when the Article submitted by the Committee on Executive Department was considered, many members said that they favored the proposition but it is a question that properly should be considered when the report of the Committee on Legislative Department is under consideration, and they therefore voted against it at that time.

On yesterday when the question with regard to passes was under consideration, a number of gentlemen said they would vote against it because that matter ought to be acted upon when the Committee on Corporations reports. Now, if the Chair is sustained, the ruling of the Chair be the law, then the question of railroad passes is taken entirely out of this Convention, because when offered again the objection can be made that it is out of order because acted upon once before by the House. I care nothing about the amendment particularly, but I think the precedent is wrong.

THE PRESIDENT—The policy of issuing railroad passes?

MR. O'NEAL—No, sir. I say the effect of the ruling of the President would be to take from the House the power to consider any amendment to any Article when in the opinion of the Chair had already been acted upon, and therefore respectfully urge that the Chair reconsider its ruling on that question because it is too far-reaching.

THE PRESIDENT—With reference to the suggestion made by the gentleman, and the argument submitted, the Chair is always glad to be assisted by delegates, and will always appreciate any argument or suggestion from delegates on the floor to aid the Chair in reaching a correct conclusion on questions of parliamentary law. Now, with reference to whether the amendment offered when the report of the Committee on Executive Department was considered was germane or not, the Chair will say that that question is decided when it arises. If a point of order is made against

it, it is ruled to be germane or not—and when it is decided it is germane it is *res adjudicata*, that it is germane when it is considered. So far as this particular proposition is concerned, the report was brought in by the Committee on Executive Department, and the distinguished Chairman of the Committee on Legislative Department called attention to the fact that a similar clause was in the report to be brought in by the Committee of which he was the Chairman, but that he saw no objection to its being considered at that time, and it was considered and fully discussed. Possibly a day or two days of the time of this Convention was consumed in a full and elaborate discussion and consideration of that question. Now, the proposition is to bring that identical question again before the Convention. The delegate from Lauderdale seeks to distinguish it by saying that the original proposition covered all offices, and his covers offices of profit. Well, all offices certainly include offices of profit, and if he desired to present it in a more restricted form, he should have offered an amendment to the proposition while it was being considered by the Convention, but his proposition was considered and is concluded by the action of the Convention at that time. Mr. Cushing does say with reference to consistency or inconsistency of amendments, that this ought to be determined by the Convention and not by the Chair. But this is not a question of consistency, between two amendments, or whether the amendment now offered is in conflict with the amendment formerly considered by the Convention. The question is whether this Convention shall be called upon to take up and consider the identical proposition, in terms or in substance, that was formerly considered. The inconsistency or incompatibility of a proposed amendment which has already been adopted is a fit ground for rejection by the Assembly, but not for suppression by the presiding officer. Now, the same authority that lays this proposition down, and I say this is not such a case, lays down this other rule, "that whatever is agreed to by the assembly on a vote either adopting or rejecting a proposed amendment cannot afterwards be altered or amended." And again: "That whatever is disagreed to by the Assembly on a vote cannot be afterwards moved again." This rule is the converse of the proceeding. The Chair will overrule the point of order. The fact that this is brought in by a separate committee would be the same as if brought in by any delegate—it would stand on the same ground.

MR. HOWZE—I have an amendment that I desire to offer.

MR. JONES—I would like to make a parliamentary inquiry.

THE PRESIDENT—The gentleman from Jefferson has the floor.

The Clerk read the amendment as follows:



Amend by inserting in Section 16 after the word "State" in the second line the words "filled by appointment or."

The Secretary here read Section 16 as follows:

Sec. 16. No Senator or Representative shall during the term for which he shall have been elected, be appointed to any office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by election by the people.

MR. HOWZE—The object of the amendment is to insert into this section the prohibition against the appointment of any Representative or Senator to an office filled by appointment as well as offices which have been created or the emoluments of which have been increased during such term. It is merely adding offices filled by appointment, such for instance as Railroad Commissioners, and Convict Inspectors. I think they should be included in the class of offices to which Senators and Representatives may not be appointed by the Governor.

MR. THOMPSON (Bibb)—I rise to a point of order, that the amendment is not in order. It is a part of the same proposition that has been before the House before. That was included within a section that has been defeated by the Convention in consideration of the report of the Committee on Legislative Department. It is an attempt to bring up a part of the same matter that has heretofore been passed upon; and it is not in order to bring it up.

MR. HOWZE—On that point the gentleman, I think, is mistaken.

THE PRESIDENT—The Chair would like to hear the gentleman from Jefferson on that point.

MR. HOWZE—I have this to say. I was looking for that objection to be made; and I was really hopeful that the President of the Convention would change his ruling upon that point. My idea in regard to it is while it may be the amendment I offer, was in spirit included in the amendment offered to the report of the Committee on Executive Department, I do not think I am precluded from offering it here, because each article proposed to this Constitution is separate and independent. Each one is entirely separate and distinct from the other, and does not become linked together until this Constitution is completed and the Committee on Harmony reports it is adopted as a whole. Further, any proposition which is germane to any section in any one of these articles, may be offered as an amendment although it may have been considered under some other article. The amendment offered in the Executive Department was germane and it was acted upon but the action of this Convention it seems to me cannot possibly affect any

amendment offered to an other article or section where it is germane. It seems to me that the only question for the Convention or the President to determine when each article is up for consideration is whether any proposition by way of an amendment is germane to any article or any section in that article. If that is true, if that is germane, why then this is the proper place and it is proper for this Convention to consider it. The only question would be it seems to me is whether or not the proposition I offered—this amendment I offered, is germane to this section. It is entirely distinct and independent of the section to the article of the Executive Department which this Convention ought to consider, if it is germane, that is as long as there is any connection, this Convention is bound to consider it, and the fact that it was considered in connection with any other section or any other article cannot have any influence upon that amendment when offered. It is for that reason I make these remarks. I wanted to give my views to the President before he ruled on the other question. I don't care to take up the further time of the Convention. I think the proposition one of great importance. It is a different one from the one considered in the report of the Executive Department. It was not in fact the question then considered, and I offer it because I think it of great importance and should be incorporated in the Constitution. I was not in favor of the broad proposition which was attempted to be passed in the report of the Executive Department by which it was sought to have the legislators excluded from all offices of every character. They should be excluded in order that we might have a government free from bias or prejudice.

MR. SAMFORD (Pike)—When the question was up before I was in favor of a similar provision; but it seems to me after we have thoroughly gone into a matter, thoroughly discussed it, thoroughly considered it, that it is unnecessary for us to take up the time of this Convention in the further consideration of a useless thing when we are not only getting along slowly in the formation of a Constitution, but are being criticized by the people who sent us here; and for that very thing I therefore move to lay the amendment on the table.

MR. BULGER—I rise to a point of order. This question should not be put to a vote of this Convention because this amendment is out of order; and because the Chair has twice decided it on this very question.

THE PRESIDENT—The point of order is well taken.

MR. JONES (Montgomery)—Would the Chair hear a member on the correctness of a ruling that has been made?

THE PRESIDENT—The Chair will hear the gentleman from Montgomery. The Chair has been rather liberal on this question.

It is somewhat irregular, but the Chair will hear the gentleman from Montgomery and will then rule upon the question and so far as the Chair is concerned will consider it as concluded.

MR. JONES (Montgomery)—Owing to its effect on future legislation, a motion to lay on the table decides nothing. It cannot be adopted. It has a very different effect from a vote to pass on a motion to indefinitely postpone. That may be called *res adjudicata*. A motion to lay on the table has no more effect, to use a legal illustration, than a continuance of a case would have as being *res adjudicata*. I submit to the Chair, therefore, whatever may be the ruling, where a vote is passed to indefinitely postpone a question, the same effect cannot and does not arise when a temporary disposition is made by a vote to lay on the table. It occurs to me, therefore, that the Chair has not given that fact any prominence in the ruling heretofore made on that question.

THE PRESIDENT—Suppose for instance this Section 16 is now under consideration, and the gentleman offers his amendment, the gentleman from Jefferson; and the Convention lays his amendment upon the table and the next section of this article is read, and he offers this same amendment to the next Section. And the point of order is made against it. The reply of the gentleman from Montgomery and those who maintain that position, would be that is offering a different section? That does not make any difference if it is the same proposition? Now suppose in a matter whether we should have a Lieutenant Governor—that question was up; and suppose the Convention had rejected it, that proposition could not be added again when each section came up, the members get up and offer amendments to each section of the article of the Committee on Executive Department that we would have a Lieutenant Governor, then by adding a provision for a Lieutenant Governor. It would be simply calling upon the Convention to consider over and over again the same proposition.

MR. ROGERS (Sumter)—I rise to ask a question.

THE PRESIDENT—The Chair thinks he has heard enough discussion on this subject.

MR. ROGERS—I want to ask the Chair if it is not the opinion of the Chair when a gentleman wishes to go into these matters that the proper motion to be made is to rescind the action of the Convention before they will do it.

THE PRESIDENT—Certainly. That was brought up in the matter of the sheriffs, where the Convention had decided on a provision for the impeachment, the suspension of a sheriff pending impeachment proceedings. The Chair ruled that an independent ordinance could be introduced and one was introduced. Any member dissatisfied with any provision in the Constitution may intro-

duce an ordinance to repeal that provision or rescind it. This Convention cannot be obstructed in its business by having the same proposition presented to it over and over again. As Cushing says, "Whatever is agreed to by the House, either adopting or rejecting a proposed amendment, cannot be afterwards altered or amended." Further on he provides the Convention may rescind its action by regular proceedings. Then he says, "Whatever is disagreed to by the assembly, cannot be afterwards moved again."

MR. SANFORD (Montgomery)—Suppose the amendment is made in different language.

THE PRESIDENT — Whether it is made in different language or not, if it is substantially the same proposition it cannot be gone over. The Secretary will read the amendment. The Chair will rule that the amendment is not in order.

MR. PETTUS—I move the adoption of the section and on that I call for the previous question.

And upon a vote being taken the main question was ordered and the section was adopted.

The Clerk then read Section 17 as follows:

Sec. 17. No person hereafter convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to the legislature, or capable of holding any office of trust or profit in this State.

MR. OATES—That is the same as in the present Constitution.

The Chair here recognized Mr. Watts of Montgomery.

MR. WATTS—I have an amendment to Section 17.

The Clerk then read the amendment as follows: "By adding thereto the following words, no negro shall be permitted to hold office in this State."

THE PRESIDENT—The question is upon the adoption of the amendment offered by the gentleman from Montgomery.

MR. WATTS — That amendment of mine is an important question in this Convention, the constitutional law. I want to request the permission of this Convention for their indulgence for about a half an hour to discuss it.

THE PRESIDENT—The question is shall the time be extended to the gentleman from Montgomery not to exceed thirty minutes.

There being no objection, the chair announced that the time asked for was granted.

MR. HOWZE—Doesn't it require a suspension of the rules and wouldn't a suspension of the rules require a two-thirds vote?

MR. FITTS—I rise to a point of order. The chair has already announced that permission has been granted.

THE PRESIDENT—In the opinion of the chair, it would require a suspension of the rules.

MR. HOWZE—It would certainly require a suspension of the rules in order to put that through, and before it be done, it must be ascertained by a two-thirds vote.

THE PRESIDENT—It seems to the chair that the point is well taken.

MR. BLACKWELL—I move a suspension of the rules.

MR. LOMAX—Permit me to call the attention of the chair to the fact that it has been the practice in this Convention since this ten-minute rule has been adopted, that when a gentleman's time has expired, a motion is made to extend his time, and such motion was adopted without a suspension of the rules. It has been repeatedly done, and I suggest that the President is sufficient for a ruling of the chair, without more, especially in view of the late time at which the point of order is made.

THE PRESIDENT—In all these cases, the point of order was not made, and the chair does not feel authorized to raise points of order, especially wherever it interrupts privileges of members. I think where a point of order is distinctly made, it seems to the chair that he is without power to disregard it.

MR. DUKE—I made the point of order that the point of order made by the gentleman from Jefferson comes too late. The chair had already announced its decision on the vote, and the gentleman had gone forward to make his speech.

MR. LOMAX—The presumption was after the chair had announced its decision, that the rules had been suspended in accordance with the law.

If a motion had been submitted to suspend the rules and the chair had announced the result, although a sufficient vote had not been had to sustain it, it seems it would come too late. No question has been submitted to the Convention at all about whether the rules will be suspended or not.

MR. PETTUS—I suggest in addition to the point of order the presumption was that the motion was behind any motion to extend the time. The motion was to suspend the rules and extend the time and there was no call for a division of the question.

THE PRESIDENT—The chair is in some doubt about it.

MR. MERRILL—I move that the rules be suspended for the purpose of extending the gentleman's time.

THE PRESIDENT—Upon a further consideration, the chair will decide that the point of order made by the gentleman from Jefferson was not in time in view of the practice that we have indulged in of extending the time without specially submitting the question of suspending the rules of the Convention.

MR. WATTS—I regret exceedingly that I should have to ask from this Convention the extension of time which I have requested. But this proposition which I have offered to the Convention was first submitted to our attention by Senator Morgan, as one of a constitutional nature, and cannot be discussed in the limited time ordinarily given to members. I desire to urge consideration by this Convention and the adoption of that amendment. We are here to do what we legally can to insure the reign of the white man in Alabama. This amendment is a pronounced step in that direction. It provides that no negro shall hold office in this State. If the Convention will bear with me—will be kind enough not to interrupt me with questions—I will undertake to show, not only that this proposition is within the Constitution of the United States, but that as a matter of policy, it ought to be adopted. This negro question is a troublesome one. It is not only hard to solve now, but it has continued to be difficult of solution for many years. For more than a century, the negro has been the subject of legislation. Whether that legislation has been by the people or by the Congress of the United States, by the States of the South or by those of New England, that legislation, at least until a few years before the war between the States, has been almost uniformly adverse to the negro race. As early as 1705 Massachusetts was legislating against the negro. In 1774, Massachusetts, and in 1822 Rhode Island, prohibited the inter-marriage of the races. New Hampshire provided that her militia should consist of free white citizens while Connecticut made it a penal offense to establish a negro school. When the Declaration of Independence was drafted and those words used which are so often quoted, "all men are created equal," there was no thought of the negro and he was not included in them. When the preamble to the Federal Constitution was written, the negro was not included in "we, the people," whose rights were there declared. I assert it without the fear of successful contradiction, that in the inception of this Government, and for nearly one hundred years afterwards it was never contemplated that the negro should be a citizen of the United States or of any State, and until 1848 he had no civil or political rights throughout this broad land of ours, except in the States of New York, North Carolina and Maine. It will thus be seen that the desire of the white race to treat the negro as an inferior did not originate in the South.

What, then, is the law on this subject? When the Federal Union was formed the respective States ceded to the Federal Government certain rights which are specified and laid down in the Constitution of the United States, and since then by sundry amendments have ceded other rights; but the rights which have not been ceded to the Federal Government are still held by the States in all of their original integrity. In the case of *Walker vs. Sanvinet*, 92 U. S., and *Maxwell vs. Dowe*, 176 U. S., and in the Slaughter House cases, 16th Wallace, it is distinctly held that the first eight amendments to the Federal Constitution when enacted had no reference to the rights of the negro race; that neither of these amendments has any reference to the exercise of State sovereignty, and that each of them had reference alone to the exercise of the powers of Congress. The 9th, 10th and 11th amendments have no relation whatever to the rights of citizenship. The 12th Amendment relates to the election of President and Vice-President. The 13th Amendment gave freedom to the slave. The 14th Amendment gave the negro civil rights only; and the 15th Amendment simply secured him from discrimination in the grant of the right of suffrage. In the famous *Dred-Scott* case decided by Chief Justice Taney in 1856, a decision which electrified the whole Union and which brought down upon the head of that learned Judge the condemnation of every lover of the negro, it was expressly and unqualifiedly decided that the negro was not then and never had been a citizen of the United States nor of any State of the American Union. If then Alabama cannot put into her Constitution a prohibition against the negro's holding office, it must be by reason of or on account of some amendment to the Federal Constitution adopted since 1856. I take it that it will not be claimed that this action is prohibited by any amendment to the Constitution of the United States except the 14th Amendment. The question then for discussion is, does the 14th Amendment prohibit it? To answer that question, it is necessary to analyze the language of the 14th Amendment and to consider the various decisions rendered since its enactment. The first clause is: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside."

Mark you, gentlemen, there are two kinds of citizens spoken of here: Citizens of the United States and citizens of a State, and their rights are different. You will recognize that there are many citizens of the United States who are not citizens of any State; and there are millions of citizens of the United States who are not citizens of Alabama. The rights and privileges of citizens of the United States are established by the Federal Constitution and by the laws enacted by Congress. The rights of citizens of Alabama are established by its Constitution and by its laws. The rights of

citizens of the United States are under the control of Congress. The rights of citizens of Alabama are to be governed by its laws.

Now, take the next subdivision of the 14th Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The absence of reference to citizens of the States in this clause, whereas in the previous clause both kinds of citizens are spoken of, shows that the framers of the 14th Amendment had some purpose in the language used and that purpose, it seems to me, was to say to the States that wherever a privilege or an immunity is granted by the Federal Constitution or its amendments, that is a privilege and immunity of the citizens of the United States. But wherever the State acts, it is a privilege or immunity conferred by the State and this clause does not say, mark you, that the privileges and immunities of citizens of the State shall not be abridged, but only those of the citizens of the United States. Therefore, a State has a right to make any law it pleases for the government of its citizens and for the administration of its affairs, with this exception only, that where it affects life, liberty or property, the law must apply with equal force to all; and where it affects the suffrage, there must be no discrimination on account of race, color or previous condition. Therefore, a State has a right to say whether a jury in its own courts shall consist of twelve or less men; whether verdicts shall be unanimous and whether there shall be any jury at all. It has the right to prohibit the intermarriage of the races. It has the right to provide for the separation of the races upon railway trains, in schools and in public places. It can prohibit or permit women to practice law. It can give women the right to vote. Further, the State can give to a white woman, if it chooses, the right to vote and prohibit it to the negro woman, for the reason that the 15th Amendment simply protects the negro male from discrimination in the exercise of the right of suffrage. The State can go further. It can establish in one of the Congressional districts a set of qualifications for suffrage, and in each and every one of the other Congressional districts it can establish an entirely different set of qualifications for suffrage. That is clearly maintained by the authorities. The only limitation, as I said before, is that these qualification must apply to all alike in each one of these different districts.

Now, I read again the other part of this 14th Amendment. "Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

A singular thing occurs right there: You will notice that in the first two clauses, we have been speaking about citizens. This clause commences to speak about persons. It says "Nor shall any



State deprive any person of life, liberty or property" and that every person shall have equal protection of the laws. That clause then includes not only corporations, but also includes women and children. It not only includes citizens but it includes anybody everywhere who has property within the State. Mark you, another thing: While the first clause says protection of life, liberty or property shall be given to every person, the second clause says the equal protection of the laws shall be given only to those who are within the jurisdiction of the State. Mark you, again, the language is not its laws, but the laws, thereby showing that the intention was to make the State give to its citizens and to the people within its jurisdiction the protection of any and every law which affects life, liberty or property. Now, it is often said that the 15th Amendment gives the right to vote. That statement is untrue. The 15th amendment does not give any man the right to vote. It simply secures the negro from discrimination in granting the right to vote. It was decided in the cases of Cruickshank and Reese both in 92 U. S., and in that of Harris, 106 U. S., that the right to vote comes from the State and not from the United States and that it is not an attribute of national citizenship. The only exception to it is decided in the Yarbrough case, 110 U. S., and in the case of Wyley v. Sinkler, 180 U. S., where it is held that in an election for members of Congress the right to vote for Congressmen comes from the United States because the Federal Constitution gives such people the right to vote for Congressmen as each State gives the right to vote for members of its Legislature. It was decided in Bradwell v. Illinois, 16 Wall., decided by the same Justice Miller who decided the Slaughter House cases, in *Minor v. Happersett* and in *Blacker v. McPherson*, 146 U. S., that the right to vote is not one of the privileges and immunities of citizens of the United States granted by the 14th Amendment. Why, we all recognize that women and children are in a certain sense citizens of Alabama and citizens of the United States, yet who would contend on this floor, or any where else, that the State of Alabama was bound to give women and children the right to hold office? What, then, is the meaning of privileges and immunities? What did the framers of the 14th Amendment mean when they used that language? It was decided in the Civil Rights case, 109 U. S., that the term did not include civil rights. It was decided in the Slaughter House cases 16 Wall., that it meant equal justice in the courts.: It was held again in *Strander v. W. Virginia*, *Rives v. Virginia*, both in 100 U. S., in *Neal v. Delaware*, 103 U. S. *Bush v. Kentucky*, 107 U. S., and in *Gibson v. Mississippi*, 162 U. S., that it is unlawful to limit jury duty to one race because it was said it was unfair to submit the property rights of one race entirely to the determination of the other. In several of these cases expressions are used, which at first glance and without due consideration, might seem to combat the position I take. If you will read

these decisions and carefully consider them, you will find that the Supreme Court of the United States, in no single instance was talking about anything except civil rights except where they were discussing the right to vote; and when they were discussing the right to vote, they spoke of it as a political and not as a civil right. Now, then, not one of these decisions, except some that I am going to make reference to now, have any reference what ever to the right to hold office. Let me call attention here to another thing. You will find these same words, privileges and immunities in Section 2, Article IV, of the Federal Constitution. They were, therefore, in the Federal Constitution eighty years before the 14th amendment was adopted. As far back as 1797 these words received judicial interpretation by the Supreme Court of Maryland. This was done in the case of *Campbell vs. Morris*, 3 Harris and McHenry. Seventy-five years afterwards that case was followed by the Supreme Court of California in the case of *Van Valhenberg v. Brown*, 43 Cal., and later in *Lyons v. Cunningham*, 66 Cal.; and the same principle is held both in *Blank v. Pausch*, 113 Illinois, and *Laurent v. Kansas*, 1 Kansas. I call attention to the principle decided there which has ever since been maintained and never departed from by the State Courts, by the Federal Courts, or by the Supreme Court of the United States that suffrage and office are political rights and as I will show you a State has a right to dispose of its offices as it pleases. In the case of *ex parte Virginia*, 100 U. S., Justice Field delivered a strong dissenting opinion in which he coincided with the preceding decision in each one of these cases I have mentioned and in which he held that the right to vote and to hold office were political and not civil rights; that the 14th amendment was intended to protect civil rights only and that each State had the right to prescribe the qualifications of its officers, and but for the 15th amendment it would have the right to regulate who should cast ballots. He decided in there, and it has been decided by numerous decisions, that but for the 15th amendment, the State could preclude the negro from voting. In spite of the 15th amendment we can prevent him from holding office in this good State. In the case of *Boyd v. Nebraska*, 143 U. S., and in the case of *Wilson v. North Carolina* 169 U. S., and in the famous case of *Taylor v. Beckham*; 178 U. S., the case which almost overturned Kentucky, it was distinctly and emphatically decided by the Supreme Court of the United States that a State has the right to prescribe the qualifications of its officers. The same thing was in substance decided in the case of *Blacker v. McPherson*, 146 U. S., where the people of Michigan undertook to elect their electors by districts and the Supreme Court of the United States upheld the law on the ground that it was a State office, and that the State of Michigan had the right to regulate it. Now, Mr. President, so much for the law on this question. What about the policy? I have heard it said that we ought not to put this in the Constitu-

tion. Why not? That we ought not to put it here because it shows too plainly that our purpose is to keep the negro out of Alabama politics. Now, Mr. President, how much plainer do we want it? Isn't every letter and every line of the report of the Committee on Suffrage to that effect? Haven't we said to the people of Alabama upon the hustings that this is what this Convention is for? Are not the people waiting to hear how we are going to provide for disfranchising the negro? Our purpose is plain. It is not denied by any man upon the floor of this Convention or in this State. You must remember that the State of Alabama never adopted the 15th amendment. It was forced upon us by the other States in the Union. The negro was forced upon us as he was forced upon other Southern States. We have the right, then, to make our protest against it in such manner as the law allows us and we have undoubtedly the right, as my distinguished friend, the Chairman of the Committee on Suffrage will tell you, under the law, to deprive the negro of holding office in Alabama. Mr. President, I have heard it said at various times in the Committees and upon the floor of this Convention, that the putting in or the leaving out of some provision would endanger the ratification by the people of the instrument we shall frame. I do not know as to the truth of falsity of these fears but I think I know what the people of the Black Belt will say as to this and what the people of the other parts of Alabama will say to a provision which excludes the negro from holding office. Put this amendment into your Constitution, go with it to the people, and argue it before them. It will matter little as to what else we may put in there. Every city and town will be aroused with interest and enthusiasm; every hillside and valley will be ablaze. The white men of Alabama of all ages and the youth who casts his first vote, whether they live in a city or on a farm; whether they live in the Black Belt, the Wire Grass or the hill counties will hasten to the polls and by their ballots will say to this Convention, well done.

MR. SOLLIE—Mr. President and gentlemen of the Convention: I regret that this important question has made its way into the Convention by way of amendment, for the reason that the question involved is so momentous that delegates can scarcely discuss it within the ten minutes allowed. Yet I shall seek to say what I have to say within the ten minutes. I am glad indeed that the gentleman who has preceded me, the gentleman from Montgomery, has done into the details of the various decisions which have been rendered, bearing upon the legal phase of the proposition. After careful consideration and study of the question, I agree with him that if this Convention wishes to do so, as a matter of law, a valid constitutional provision may be made by which the negro may be precluded from the privilege of holding office in Alabama. I can do no more than to go briefly into an agreement with the gentleman upon the propositions of law which he has

cited, without attempting to take up the cases one by one. I wish, however, to make somewhat clearer than he has done some of the distinctions and demarkations—lines upon some of these questions. That provision contained in the Fourteenth Amendment of equal privileges and immunities was in the Articles of Confederation. It received consideration and its meaning was known to the courts and the laws of the nation long before any of the amendments to the present Constitution, or at least before the Fourteenth or Fifteenth Amendments were made. It has been fixed by the decisions as securing simply the civil rights of citizens. The Fourteenth Amendment has no bearing whatever upon this provision. Nor has the Fifteenth Amendment. True, the rights to hold office is a political right, and the right to vote is a political right, but they are separate political rights, and they belong to different classes of political rights. They contemplate different things; they contemplate different privileges. They are different in meaning. Why, Mr. President, when this identical question was before the Congress of the United States, when the Fifteenth Amendment was being passed upon, this question was argued—the question whether the broad term political rights covering all parts of the political rights of the citizen, should go into that amendment, or whether it should be restricted and limited to the single proposition of the right to vote, was then argued. Numerous statesmen spoke upon the question, and it was finally agreed upon that the right of suffrage alone should be protected.

Mr. President, showing that our record is consistent and in harmony with the result of that discussion, our court, in the case of Kentz against the City of Mobile, 120 Ala., where the question came up as to whether a man should be required to be learned in the law to be an officer in the city of Mobile, held the act to be unconstitutional in the provision which required him to be learned in the law, not because it was obnoxious to the Fifteenth Amendment, but because it was obnoxious to Section 2 of Article I of the Constitution of this State. By some strange notion of the Convention of 1875, that provision was enacted. It does seem that some of the constitutional provisions of that instrument must have been made more or less under duress of the Fourteenth and Fifteenth Amendments; yet, although neither of the amendments required that there should be put into our Constitution a clause protecting all the political rights of the citizens and giving them to every man, it was done, with the exception that the right to hold certain offices was confined to persons learned in the law; and inasmuch as the office created in Mobile was not within the constitutional inhibition, or rather constitutional requirement, that the officer should be learned in law, a provision requiring such was stricken down by our court as being unconstitutional, and because of our own Constitution, and not because of the Fifteenth amendment in the United States Constitution. So, then, our own court

passing upon that question has followed up the discussion and the conclusion reached in Congress and has followed up the true and sensible meaning of the Fifteenth amendment, holding that the right to hold office is protected in Alabama alone by our own Constitution.

Now this Convention has stricken out the words "political rights" in our Constitution. Then we come back to the proposition offered here, and insist that one of the two political rights, the right to vote is protected by the 15th Amendment, and the other, the right to hold office, is not. I hold with others that we are not bound upon the present question by the 15th Amendment; that nothing else but the 14th and 15th Amendment could by any stretch of the imagination even touch upon the question, and the decisions of the State courts and the Federal courts have so clearly shown that the 14th amendment does not bear upon it, that we can pass from that amendment and limit our investigation to the 15th Amendment alone, and that the 15th Amendment is specifically pointing out the right to vote, or the suffrage right, according to the old rule of construction that the specifically naming of one in a series of matters standing in equal situation in an enactment, is an exclusion of the others. Then I say, Mr. President, that if this Convention sees proper to do so, without going further into details and arguments, in my humble judgment, the Convention has the power to pass this ordinance.

Then, passing from the legal aspect of the case, is it policy to do so. It has gone throughout the length and breadth of the State of Alabama that the chief aim and object of this Convention is to reform the suffrage of this State. If there is one thing which may more infuriate the people of a community, may have a more vexing effect than any other, it is to see the prospect of their local affairs or of their district affairs, or of their State affairs, passing into the hands of negro officials. If we are in Alabama to have that peace and quietude which is best for both races, I say that it is best that the negroes do not hold our offices, but that the white men hold them. The day may come when the negro has gone so far in the arts of civilization that it will be proper and right that we reconvene ourselves in a Constitutional Convention, and extend to him new rights, but until that day comes, and we know not when it will come—it is problematical, it is wrapped in the great bosom of the future, and we cannot say when it will come, the better and safe plan is to act upon the conditions which now exist, and which will exist most probably for years to come, and say to the negro, it is best for you, and for us all, that we curtail you of this right to hold office in the State of Alabama. Because with the negro in local offices, and the white men in Alabama appearing before the negro official, always means to stir anew the old feelings of prejudice which cannot be restrained, but

which if the negro keeps his place and continues to make the progress which he has made in times past, may become a thing of the past. The negro will remain here, and some of them must vote in Alabama, and so long as that is true, there is a possibility and even a probability that they may hold office. The probability becomes stronger than in the past, because we have been sent here by a people who have carried their elections confessedly against the popular will of the section where the negro is in majority, as long as they have wished to do so, and have sent us here for the purpose of making laws under which we may purify the ballot box, and by which we may declare the results of elections as they are, and that being true, there is more probability of the negro holding office in the immediate future than there has been in the immediate past, unless the right is taken from him.

MR. COLEMAN (Greene) — The question now before the Convention has been precipitated upon us somewhat, and I am sure that delegates here who are not members of the Committee on Suffrage, have not had time sufficiently to consider the question now being discussed. In the main, the first gentleman who addressed you, stated the law as we understand it to be in regard to the authority of the State to exclude the negro from holding office, but so far as he asserted that the State of Alabama had the authority to enfranchise the white women and disfranchise the negro woman, we are unanimously opposed to his conclusion. Now the fourteenth article reads as follows: "All persons," and I stop here to say that "persons" include females as well as males, "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the States where they reside." Now, there is a constitutional declaration in the 14th Amendment "that all persons born or naturalized as citizens of the United States, are citizens of the State in which they reside." Here is the 15th Amendment: "The right of citizens"—who are citizens, "all persons born in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside." Therefore "the right of all citizens of the United States," which includes men and women, for they are persons, "shall not be abridged or denied by any State on account of race, color or previous condition of servitude." It does seem to me that if anything could be plain, it is plainly here declared that you cannot enfranchise white women and disfranchise the negro women. Nothing could be clearer. Nothing could be more simply expressed, and for that reason we do not consider the proposition of the distinguished Senator to whom the gentleman has referred as stating a correct exposition of the law.

Now so far as the negro may be disqualified by the State from holding office I take it that the latest exposition of the Supreme

Court of the United States in the case of Taylor and Baker, which expressly declares that offices in a State are not included within the words privileges and immunities, and for that reason the court held that it had no jurisdiction of the case and dismissed it. That decision was rendered by a divided court of five to four. Following the decisions of the Supreme Court as we have, and considering the conclusions to which they have come recently, especially in the Puerto Rico and Philippine cases, it is exceedingly doubtful where the Supreme Court will land when this question comes up in a political aspect from the South. I am free to say that under the latest exposition, the case that I have referred to, by a divided court of five to four, the State has absolute authority over the question of whom shall hold office in the State. The real question is one of expedience under all the circumstances. These questions were discussed time and again by the Committee on Suffrage and Elections, and it was our conclusion that inasmuch as we expected to eliminate the ignorant and incompetent voter from the exercise of suffrage, there would be no danger in this State, and we thought it the better policy as well as more consistent with our prosperity that we leave it untouched, but, Mr. President, inasmuch as it is before the Convention, and it is a matter of supreme importance, I move that the resolution be printed, and put upon the table, and that further discussion be postponed until we have time to discuss it more at length.

The President here resumed the chair.

MR. COLEMAN (Greene)—I would like to have it made a special order. I move that the amendment be printed and laid upon the table, to be taken up for further discussion hereafter and that we now proceed with the regular order of business.

The gentleman from Dallas (Mr. Burns) was recognized.

MR. BURNS—I know the motion is not debatable, but I have a substitute that I wanted to get in, but I was a little slow.

THE PRESIDENT—Has the gentleman from Greene any objection.

MR. COLEMAN—I have no authority in the matter, but have no objection to its being offered.

MR. BURNS—I ask to offer the amendment as a substitute.

The substitute was read as follows: "And no person who is not a white qualified voter shall hold any office under the State."

THE PRESIDENT — The motion of the gentleman from Greene is that the amendment and the substitute lie upon the table to be printed, and taken up for consideration at the pleasure of the Convention.

MR. WATTS—This is an amendment to this Section 17. Are we going on and pass the section without paying any attention to the amendment, or what are we going to do with it?

MR. OATES—I was going to remark that there are other places in the Constitution where this would come in much more appropriately for consideration, than here, and hence I am in favor of laying it on the table to be taken up for consideration later.

Upon a vote being taken a division was called for, and by a vote of 74 ayes and 21 noes the amendment was laid upon the table, with the substitute, to be taken up at the pleasure of the Convention.

MR. WHITE—I have an amendment to Section 17.

Section 17 was read: Thereupon the amendment was read as follows: Amend by striking out the word "hereafter" in line one.

MR. WHITE—The necessity for this amendment is apparent. There is no reason why a person who has been heretofore convicted of embezzlement of the public money, or any other infamous crime should be entitled to hold office or to be a member of the legislature, and I suppose the Committee will probably accept it.

MR. OATES—This is the old section, copied from the present constitution, but I have no objection in the world to the gentleman's amendment, and have no idea that the Committee has any. As far as I am concerned I am willing to accept it.

Upon a vote being taken the amendment was adopted, and upon a further vote the section as amended was adopted.

Section 18 was read as follows:

Sec. 18. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either House as to change its original purpose.

MR. OATES—That is the provision in the present Constitution and I move its adoption.

Upon a vote being taken the section was adopted.

Section 19 was read as follows:

Sec. 19. No bill shall become a law until it shall have been referred to a standing committee of each House, acted upon by the committees in session, and returned therefrom which fact shall affirmatively appear upon the journal of each House.

MR. OATES—This is amended so as to prevent such practices as have been shown to exist in some cases. For instance I heard evidence here about a bill being passed around in open ses-



sion, from one member of a committee to another, and they were permitted to write their names on the back, and this section now requires a reference to a standing committee. Another practice has been engaged in, of referring a local bill simply to the delegation from the county, and it is passed upon by them. We have no such thing as county sovereignty in this State. The State itself is the sovereign. This section also provides that the fact that it is referred to a standing committee and passed upon in session by the Committee of each House must affirmatively appear upon the journal. I move its adoption.

MR. BROWNE—I do not know whether the section reported is correctly printed, but it reads “by committees in session.” I would suggest that it should read “acted upon by such Committee in session,” so that it may be acted upon by the Committee to which it is referred.

MR. OATES—There are the Committees of each House spoken of.

MR. BROWNE—I know of one instance where it was referred to one Committee and reported back by another.

MR. OATES—There cannot be any mistake the way it reads here, and I move the adoption of the section as reported.

MR. COBB—I will offer that amendment, because it is in harmony with what precedes.

MR. BROWNE—I offer an amendment, which the Clerk will read.

The amendment was read by the Clerk as follows: “Strike out the word ‘Committees’ and insert the words, ‘such Committee in each House.’”

MR. WALKER—As you have it there, the amendment would make it read “such Committee of each House in session.”

MR. BROWNE—Such committee in session of each House.

MR. COBB—Such committee seems to me to be sufficient.

MR. BROWNE—I think it is right as written, “standing Committee of each House, acted upon by such Committee in session.”

I only desire to state that in the Shelby County case, the bill was referred, as the journal will show, to one Committee, and that it was reported back by another and different committee, and that question is before the Supreme Court, not yet having been decided. Certainly it will obviate the attempt to do such a thing in the future.

The amendment was again read: “Strike out ‘the committees’ and insert ‘such committee in each House.’”

MR. OATES—That is a change of language, and if the gentlemen think it is more expressive, all right, I have no objection to it. I think it is clear like it is.

MR. COBB—I move to strike out the word “each” in the amendment.

A reading being called for the section as amended was read: “Sec. 19. No bill shall become a law until it shall have been referred to a standing committee of each House, acted upon by such committee in session, and returned therefrom, which fact shall affirmatively appear upon the journal of each House.

Upon a vote being taken the amendment to the amendment, and the amendment were adopted, and thereupon the section, as amended, was adopted.

Section 20 was read as follows:

Sec. 20. Every bill shall be read on three different days in each House, and no bill shall become a law unless on its final passage it be read at length and the vote taken by yeas and nays, the names of the members voting for and against the same be entered on the journal, and a majority of each House be recorded thereon as voting in its favor, except as otherwise provided in this Constitution.

MR. HARRISON—I have an amendment.

The amendment was read as follows:

Amend Section 20 by inserting between the words of and each where they occur on the fourth line of said Section, the words “those elected to.”

MR. HARRISON—The effect of this amendment is to require a majority of the members elected to each House to vote in favor of a bill before it becomes a law. Under the Section as reported by the Committee, and as has been the case in Alabama under the present Constitution, with a Senate composed of thirty-three men, seventeen constituting a quorum, nine Senators can pass a law, and it has often been done. With the House of Representatives of 100, fifty-one being a majority, twenty-six members of the House could pass a law. I submit that this will be one of the safeguards in the direction which the Convention has undertaken to put into operation. I do think, especially when we have confined the Legislature to the consideration of general laws, and when they are required as by articles already adopted, to provide by a system of general laws all relief heretofore given by special and local laws, that they should be carefully considered, and I insist that this provision will see that they are more carefully considered, because it will require a greater number of members or Senators to vote for

such measures. Further, Mr. President, I insist it will give that care and attention that ought to be given to the legislation, and it will give more stability to the laws enacted. I do not think it is right that any law should be passed upon the vote of merely nine Senators, or twenty-six members of the House of Representatives. Tennessee and a number of other States have adopted this rule and my information is that in every one of them it has worked well. I offered an ordinance to this effect, which was referred to the Committee. Not being a member of the Committee, I do not know what the position of the Committee was with reference to it, but in my judgment it is one of the most important safeguards that we can place in this Constitution, and I desire to bring it to the consideration of delegates of this Convention.

MR. MACDONALD—Would not the amendment you suggest require a unanimous vote if there was only a quorum of members present.

MR. HARRISON—It would require fifty-one Representatives to vote for the passage of a law, and require seventeen Senators if they were only there, and the rest absent, I think, Mr. President, it ought to be unanimous. A majority of a legislative body should be required to vote for the passage of any law and I think it will prevent hasty legislation, and that it is not asking too much that a majority of those elected by the people for the purpose of legislating should at least attend before bills are enacted into law.

MR. FITTS—Would not it have the effect of making Senators and Representatives more diligent in attending in order that they might be there?

MR. HARRISON—I think it would, and that is the reason I propose it. The result of it would be that we would have a better attendance upon the sessions of the Legislature.

MR. SANFORD—I offer an amendment.

MR. BEDDOW—I desire to ask the gentleman from Lee a question.

THE PRESIDENT—The Chair will suggest to the gentleman from Montgomery that there is an amendment pending, and to be in order it should be offered as an amendment to the amendment.

MR. SANFORD—It is hardly an amendment to the amendment. It is on a different subject, and I will wait.

MR. BEDDOW—In case an important measure is pending before the Senate and House could not a few filibusterers prevent the passage of the law sometimes?

MR. HARRISON—We have already adopted a provision that gives the House the power to enforce the attendance of members.

MR. SANFORD—It is sometimes very difficult to do that, is it not?

MR. HARRISON—I think not.

MR. OATES—The delegate from Lee stated he introduced an ordinance upon this subject, and was before the Committee and discussed it, but a majority of the Committee thought it best to report this system as it stood. The gentleman will see that this is precisely the language of Section 21. Here is numbered 20. Twenty-one of the present Constitution. The delegate from Lee conferred with me about it, and I was very willing that he should offer the amendment which he has offered because it is an important matter to be considered, and not speaking for the Committee, but individually I am in favor of the proposition as it is reported. Individually I am in favor of the amendment offered by the delegate from Lee, for the reasons which have been stated by him. Now sir, if there be any member of the Legislative Committee who desires to be heard in opposition to the amendment, I would be glad for them to be recognized and heard.

MR. O'NEAL—I desire to offer an amendment to the amendment.

MR. WHITE—This amendment it seems to me to be a great departure from our long legislative precedent—

MR. OATES—If the gentleman will allow me.

MR. WHITE—Yes, sir.

MR. OATES—One thing I wish to add to my remarks. I do not know which side the gentleman takes, but the delegate from Lee has had long experience in the Legislature, and in fact he is now a Senator, and has brought to my attention more forcibly the objection which he mentioned to this Section as it is, and being in favor of the amendment that he offered.

MR. WHITE—I am speaking for the people rather than for the members of the Senate. As was suggested by the gentleman from Jefferson in his inquiry to the gentleman from Lee, about persons who wanted to defeat bills absenting themselves, to prevent the passage of a measure. So that would work both ways. It might stimulate those who wanted to pass a measure to assemble, while it might on the other hand stimulate those who wanted to defeat a measure to remain away. Now suppose that either House, or branch of the Legislature, was nearly equally divided between two political parties. Then the political party upon whom the responsibility for the legislation rested, having a bare majority, if one member should be sick, or absent, the minority could defeat the will of the majority, though that party be held responsible for the legislation having the majority in that body.

MR. LONG (Walker)—Seventeen constitutes a quorum in the Senate. Could not nine men indefinitely postpone a bill, which means its death, whereas, it would take a majority of the Senate, seventeen members, to pass it? Could not nine men kill it by indefinite postponement, whereas it would take seventeen to pass the bill, and would not that apply to the House as well?

MR. WHITE—That seems to be a very strong objection to the measure, as suggested by the gentleman from Walker. Less than a majority might defeat a bill, while it would take a majority of the whole House to enact a law. In other words, nine members of the Senate might indefinitely postpone a bill and thereby defeat it, whereas it would take seventeen or more to pass the measure. Now, the complaint that nine Senators may enact a law is a complaint showing the necessity of increased representation. If there is an evil in that, then the evil is further behind us than the point that we are discussing. We need more representation in Alabama if there is anything in the objection, or anything in the suggestion that nine men in the Senate can pass a law. In other words, if that objection is well taken, then we need increased representation in the Senate, for as long as we have the representation which we now have, and which we have already decided to have in the future, it is right and proper that a majority of that body, or of either body, should have the right to enact legislation, and that the will of that majority might not be defeated by the minority of another party in the body. Therefore, I am opposed to the amendment. In other words, it is an innovation as I first said, and without some strong reason, we ought not to make that innovation.

MR. HEFLIN (Randolph)—If the amendment offered by the gentleman from Lee should prevail, would not a quorum be powerless to pass a bill if there was one dissenting vote?

MR. WHITE—Why, of course, a bare quorum with one dissenting vote could defeat any bill.

THE PRESIDENT—Does the gentleman make any motion with reference to the amendment?

MR. WHITE—I do not wish to cut off debate. I regard this as a very important measure.

MR. BULGER—It has been well said that this is a departure and an innovation on the practice and custom of the law-making power of this State, since the organization of the government of the State. Now, there are two or three reasons, in my humble judgment, why this amendment should not be adopted. It is not unfrequently the case that there are twenty-five members of the House of Representatives who are absent from a session; that would leave in session seventy-five members.

MR. O'NEAL—If the gentleman will permit a question: You say that this is an innovation upon the practice which has prevailed in this State. Was not the question of quadrennial sessions of the Legislature, which we adopted yesterday an innovation; and didn't you vote for that innovation?

MR. BULGER—Yes, I think so; and, therefore, I favored biennial sessions. Now, as I was stating when interrupted—if there are seventy-five members present—

MR. HARRISON—Wasn't it an innovation upon the customs of the State, when, thirty-five provisions were stipulated prohibiting local legislation.

MR. BULGER—Yes, I think so.

MR. HARRISON—You voted against that, too.

MR. BULGER—I think so; I was in favor of local legislation by the Legislature and not by the Commissioners' Courts, and I have yet no reason to regret how I voted.

Now, if seventy-five members only are present, which frequently occurs in the Legislature, it will require fifty-one members to pass a bill. It will only require thirty-eight members to defeat a bill. That practice ought not to prevail in any Assembly, whether it is of the importance of a legislative assembly or not. It should require in the Legislature as many votes to defeat a bill as it requires to pass a bill. If this amendment is adopted, that will not be the case. Before any important bill can become a law in this State, when there are only seventy-five members present, the opposition can raise twenty-five votes and defeat the bill, because we all know that a motion to indefinitely postpone a bill amounts to defeating the measure, and it would require fifty-one votes to pass the bill; therefore I move to lay the motion on the table.

Upon a vote being taken, a division was called for and by a vote of fifty-six ayes and thirty-five noes, the motion to table was carried.

MR. SANFORD (Montgomery)—I offer an amendment.

The amendment was read as follows: "Amend Section 20 by inserting in the second line of said section after the words 'at length,' the following, 'which fact shall be entered on the journal.'"

MR. SANFORD—I make that amendment simply because the Constitution under which we now live contains pretty much the same words, but sometimes bills are read by merely reading the title, and it appears as if they were read three times. By entering this fact on the journal it will show that it was read at length, and that is the reason I offer the amendment.

MR. OATES—I do not see the necessity for the amendment, and, therefore, I think that the section as reported by the committee ought to pass. I cannot see that there is any necessity for the amendment offered by my colleague, and, therefore, I move to table it.

Upon a vote being taken, a division was called for, and by a vote of fifty-five ayes and twenty-one noes, the amendment was tabled.

MR. LONG (Walker)—I have an amendment.

The amendment was read as follows: "Amend Section 20 in the fourth line by striking out the words 'in its favor.'"

MR. LONG (Walker)—If my amendment was adopted, it would read as follows: "Every bill shall be read on three different days in each house, and no bill shall become a law unless, on its final passage, it be read at length, and the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal, and a majority of each house be recorded thereon as voting except as otherwise provided in this Constitution."

It is fixed to provide that a majority of the House can pass a bill like it has always done, and I think it is a safeguard to legislation. It prevents a minority from defeating legislation, and it is right on the line of the amendment which was offered by the gentleman from Lee, and it has been discussed on this floor, and I think the gentlemen understand it. I think it is a very necessary amendment and that it should be adopted.

MR. OATES—I don't see the necessity for the amendment. If I did, I would make no objection to it, but I think it is right as it is, for a majority of each House to be recorded as voting in its favor, and otherwise it cannot pass, and, therefore, those words have an office and effect, and I move to table the amendment.

Upon a vote being taken, the motion to table was carried, and upon a further vote, the section was adopted.

Section 21 was read as follows:

Sec. 21. No amendment to bills shall be adopted except by a majority of the House wherein the same is offered, nor unless the amendment with the name of those voting for and against the same shall be entered at length on the journal of the House in which the same is adopted, and no amendment to bills by one House shall be concurred in by the other unless by a vote taken by yeas and nays, and the names of the members voting for and against the same be recorded at length on the journal; and no report of a committee of conference shall be adopted in either House, except upon a vote

being taken by yeas and nays, and entered on the journal, as herein provided for the adoption of amendments.

MR. OATES—I move the previous question on the adoption of the section.

MR. WATTS—I want to know whether in the fifth line of that section the words “of a majority” appear. The words “of a majority” are in the old Constitution.

The section was again read.

MR. OATES—I wish to say the emendation of the old section was very carefully considered, not only once but twice by the Committee and it is reported here just as it was adopted by the Committee, and hence I move the previous question on its adoption. I think it is perfectly clear.

The main question was ordered and upon a further vote the section was adopted.

Section 22 was read as follows:

Sec. 22. The legislature shall pass general laws under which local and private interests shall be provided and protected.

MR. OATES—That has already been adopted, and incorporated into the article on Local Legislation, and for that reason I ask unanimous consent that it be stricken out here.

There being no objection the section was stricken out.

Section 23 was read as follows:

Sec. 23. The legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery in this State; and all acts, or parts of acts heretofore passed by the legislature of this State, authorizing a lottery or lotteries and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

MR. OATES—That is the same as in the present Constitution, and I move its adoption.

Upon a vote being taken the section was adopted.

Section 24 was read as follows:

Sec. 24. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the legislature, after the same shall have been publicly read at length, immediately before the signing and the fact of reading and signing shall be entered upon the journal; but the reading at length may be dispensed with by a two-



thirds vote of a quorum present, which fact shall also be entered on the journal.

MR. OATES—The change made in that from the corresponding section in the present Constitution is it was only necessary heretofore for the presiding officer to read the title before signing, and this requires the reading of the enactment at length before the signing, but the reading at length may be dispensed with by a two-thirds vote of the quorum present, which fact shall be entered on the journal. In some cases it may be desired where a bill is of very great length and the House is satisfied it is all right, and it would consume a great deal of time to read it, to dispense with the reading, and by a two-thirds vote they can so dispense with the reading of it at length.

MR. HOWELL—I would like that rule, but would it not in case the motion was made to suspend the rule, obviate the necessity of reading the bill by its caption.

MR. OATES—Of course it would have to be read by its caption, it is only the reading at length that may be dispensed with by the two-thirds vote of the members present.

MR. HOWELL—It would not require the reading of the caption would it?

MR. OATES—It would be necessary to read that to know what he has in hand. That is unavoidable.

An amendment by Mr. deGraffenreid was read as follows: Amend by striking out from section 24 all after the word "journal" in the fourth line.

MR. deGRAFFENREID—I do not care to discuss that amendment, except that I want to call the attention of the House to the fact that it strikes from it the provision that two-thirds of the House may dispense with the reading of the bill at length when it is to be signed by the presiding officer of the House. It has always been done heretofore, and then, under the requirement that we have had heretofore, this House knows that frauds have been perpetrated upon the General Assembly, and as we have already declared by our action that the journals of each House shall be presumed to be absolutely true. I think that everything that can be done by this Convention, to prevent a fraud being perpetrated upon the house should be done, and for that reason I offer the amendment, and move the previous question.

MR. OATES—Don't move the previous question.

MR. deGRAFFENREID—You have the right to close the debate.

MR. SAMFORD (Pike)—I hope the gentleman won't move the previous question. I want to offer a substitute. I offer the clause in the old Constitution as a substitute.

The motion for the previous question was withdrawn.

MR. SAMFORD (Pike)—I desire to say that I do not see how the Committee could have given a careful consideration to this section, and reported the section which they have. Every one who is at all familiar with legislation, knows that there are a great many bills which pass the legislature, and if the Speaker of the House and President of the Senate were required to read every bill at length before it was signed publicly in the presence of both Houses, that it would take up almost as much time as would be consumed in the passage of bills, and it is entirely unnecessary.

MR. MACDONALD—Don't you think it would be an additional safeguard as to the correct engrossing of the bills. The third reading is on the engrossment of the bill, and has there not very frequently been a mistake made in the engrossment of bills.

MR. SAMFORD (Pike)—In reply to that I will say that it might serve as an additional safeguard to require that every bill should be read by every member in each House publicly, and that would be an additional safeguard as to the engrossment of a bill. The law provides that it shall be read at length in both Houses, three separate and distinct times. The law provides that the Governor shall read it, and if you want to place any more safeguards around it, why there ought to be a provision that it could be taken out of the House and read by special committee on engrossment or something of that kind. If these bills are read at length by requirement of the Constitution, in each House where they are passed, I submit to this Convention, it will take up entirely too much of the time of the General Assembly, or Legislature, as we now call it, and time that seems to me is unwarranted, when we take into consideration the fact that the only intention of the Constitution makers of 1875, when they required the bills to be read by their titles, was to call especial attention of the members of each House to the signing of the bill, and what was in the bills that were being signed.

MR. WHITE—This contemplates that the bill itself shall be signed by the presiding officer does it not?

MR. SAMFORD (Pike)—Yes sir.

MR. WHITE—Then I will ask you if a bill up to that time had been under another wrapper, if it would be possible, when it was read at length before the House to conceal its contents any longer and the identity of the bill itself.

MR. SAMOFRD (Pike)—I hope the gentleman from Jefferson will not measure all future legislation in this State by the frauds that were committed with reference to the removal of the Court House of Shelby County, and I hope that all members of future Legislatures in this State will not be measured by that standard.

MR. BULGER—I will ask the gentleman if the Speaker is required to read the bill at length, whether it would make it any more sure that he would detect what wrapper it had been under after the bill had been engrossed?

MR. SAMFORD—It occurs to me that the question of the gentleman from Jefferson, and the question of the gentleman from Tallapoosa are not germane to this matter at all, but in view of the question of the gentleman from Jefferson, the question of the gentleman from Tallapoosa is very pertinent, and answers the question of the gentleman from Jefferson.

Now, Mr. President, I do not care to detain this Convention on this proposition. I desire merely to call the attention of the Convention to the immense amount of time that would be taken up in the reading of these bills at length, by both the Speaker of the House and the President of the Senate, and it occurs to me that this time would be uselessly consumed. They say there is a provision in here which says that by a two-thirds vote of the members this reading can be dispensed with. The very first thing that would be done, and the way this thing would work in actual practice, whenever bills were placed upon the Speaker's desk, or upon the desk of the President of the Senate, some member would get up and say, "Mr. President, I move that the reading of the bill be dispensed with," and a two-thirds vote would immediately be recorded in favor of the motion, because that is a very burdensome part of legislative duties, and the bills would be signed, and not even their titles read.

MR. CUNNINGHAM (Jefferson)—I desire to ask the gentleman from Pike if the signature of the presiding officer is not intended as a guarantee that the bill as signed by him is the bill that passed upon its third reading.

MR. SAMFORD—That is true. Yes.

MR. CUNNINGHAM—Then I desire to ask the gentleman, under the present Constitution, is it not practically a farce?

MR. SAMFORD—In answer to the gentleman from Jefferson, I say it is not a farce unless the members of the different Houses employ clerks and stenographers who are not worthy to be trusted.

MR. CUNNINGHAM—Would not a motion by a Senator or Representative to dispense with the reading at length of the engrossed bill, or of the bill that had passed, exonerate the presiding

officer from any responsibility that he might otherwise incur for an error in the bill?

MR. SAMFORD—In practice the presiding officer, as every one knows, is not required to read the bill at length, and therefore no further responsibility attaches to him than to see that it has the ear-marks of authenticity, and when he has complied with that part of his duties, he has complied with everything the law imposes upon him, and all that the people expect of him.

MR. SANFORD (Montgomery) —Allow me to suggest to you that the present Constitution requires it to be read at length on the day of its passage.

MR. deGRAFFENREID —I desire to ask the gentleman a question.

THE PRESIDENT—Does the gentleman from Pike yield.

MR. SAMFORD (Pike)—I have only a minute or two, and would do so with pleasure if I thought I could convince the gentleman by answering his question.

Another proposition is, that the Constitution requires, as suggested by the gentleman from Montgomery, that a bill shall be read at length a third time after its engrossment, and in the presence of the Senate and of the House of Representatives, and it occurs to me there are enough safeguards thrown around it, so that if the officers who have been selected by the two houses of the General Assembly do their honest duty there can be no possible opportunity for fraud, or for error creeping into it.

MR. MACDONALD—It occurs to me that the Legislature could not be better engaged, and could not use the time for which the State of Alabama pays them more advantageously, than by devoting this additional time to seeing whether the engrossing clerks have engrossed the bills.

The gentleman from Pike says that we ought not to look forward to the future and judge it by the past, but that we ought to consider that the last Legislature or the last few Legislatures were exceptions. Well, I don't know that we have anything to base an opinion upon in that respect, and I do not know that we can get any better predicate for prophecies as to what will occur in the future than our experience as to what has occurred in the past. Engrossing clerks have practically been the law-making power of this State for twenty years. I have had some little experience about these things and know whereof I speak. I know of instances where amendments have been passed by the Senate to bills adopted by the House and yet the Engrossing Clerk in the plentitude of her wisdom, has seen fit to leave out a number of such amendments, and the people have been absolutely powerless so the courts have

decided, because we cannot bring these amendments before the courts of the State. We cannot show they have been adopted. We cannot impugn the Journal, nor impeach it in any way, but the Engrossing Clerk having copied off the bill as she understood it, and the bill having been read in the House and signed by the Speaker of the House, it became the law, and could not be questioned, although in point of fact it was not the law adopted by the two Houses of the General Assembly.

MR. deGRAFFENREID—We have already passed on this matter in the article on Local Legislation by an ordinance which almost prohibits local legislation in the State, have we not?

MR. MACDONALD—Yes, sir.

MR. deGRAFFENREID—And the General Assembly in the future will have plenty of time, will they not, to have these matters read, that they have acted upon?

MR. MACDONALD—Exactly so, sir. The suggestion of the gentleman is eminently pertinent and proper; they will have plenty of time. It seems that safeguards in the engrossment of bills have not been sufficient in the past. It seems that in the past that whatever the engrossing clerk desired to interpolate into the bill for any motive she might have—I mean he or she, and should not use the feminine pronoun in this respect, but it seems to me that the Legislature should not only ascertain that the laws are proper ones before they are passed, but they should see that they are passed in the proper manner. It seems to me that this section should be adopted as reported by the committee because it carefully safeguards this whole matter.

MR. PETTUS—I have an amendment to the delegate who proposed the substitute and I would ask unanimous consent to have it added to that amendment.

There being no objection made, the amendment was read as follows: "Amend by adding at the end of the substitute offered by Mr. Samford of Pike the words "provided that on the request of any member the bill shall be read publicly at length before signing."

MR. PETTUS—I move the previous question upon the adoption of the substitute of the gentleman from Pike.

MR. HARRISON—I appeal to the gentleman to withdraw that for one moment.

MR. PETTUS—If the gentleman from Lee will renew it.

MR. HARRISON—I will. There are several propositions here and as the choice of the propositions presented, I will support this substitute, but I desire to call the attention of the Convention to

what I conceive to be a bad provision in either of the alternatives which are offered. Prior to the adoption of the Constitution of 1875, the presiding officers of each House were called upon as now to sign these bills. They took them to their offices, read them, or had them read to them, and they took the responsibility for their contents. It was incumbent upon the officers to see that these bills were the bills that had passed the Houses. They had an opportunity to do so, and when these bills were presented to the Governor, he knew that the President of the Senate and Speaker of the House had both examined them and passed upon them and that they were correct. After the adoption of this Constitution, and I appeal to gentlemen here who have had legislative experience if it is not a fact that it was utterly impossible for the presiding officer to know what was in the bills. There comes along a pile of bills, perhaps six or eight inches deep, or I have seen them a foot or two deep, and the presiding officer says, "The President of the Senate will now sign these bills as read by their caption"—

MR. WHITE—I want to ask if the article we have passed against local legislation there will be so much time taken up in the signing of bills?

MR. HARRISON—I hope not. Perhaps there will not be so many bills, but I will answer that I do not believe under the change in our Constitution, that any Legislature can assemble here and comply with the mandates and provisions contained in this Constitution, at its first session in sixty days, and if you hamper them in this way, and provide in effect that every bill shall be read four times instead of three they cannot possibly get through, and I insist, Mr. President, that there is no sense in it. You might as well say that they shall be read five times, or six times, and fix it so that the Legislature can never have any time to do anything. I think three times is enough, and I believe, Mr. President, that you will have sufficient safeguards to see that bills are what they purport to be, if you will require the presiding officers to sign these bills after having carefully read and examined the same. I would rather risk the presiding officer of either House, and would rather put the duty upon him, when the House is not in session, to take these bills and examine them, and see that they are correct, and then there would be a responsibility upon this officer which would guarantee their correctness, then, at least one man will have examined them. I appeal to every man who has witnessed legislation under the old Constitution, that there is not a member who pays any attention to the reading, and there is no opportunity given to the presiding officer to examine them, but the bills are brought down from the enrolling and engrossing rooms, handed to him when the house is in session, and simply read by the caption, and he places his signature there without any opportunity to examine the bill, or to see whether it is properly engrossed or enrolled or

not. I simply want him to have this opportunity. I believe that this is one of the false steps which were made in 1875. The intention was good but in its practical operations it has accomplished no good whatever. I would much rather that we go back to the old plan, and I cannot conceive any delegate will insist, as my friend from Jefferson does, to not only handicap the Legislature, and to curb them hand and foot, but also undertake to buck and gag them, and say that they shall not do anything. I think we would have a better system and that it would be a guarantee to us to have it placed in the Constitution that the presiding officer shall be required to carefully read and examine the bills before he attaches his signature thereto, than to provide for this matter either under the old Constitution or the section now proposed. If I am forced to make a selection between the two, I will support the substitute. It will take less time, they will be rapidly read, if read at all, or as has been suggested here, ninety-nine times out of a hundred it will be only that much time consumed. We know how many of the members of this Convention pay any attention to the second and third reading of ordinances. Many of you have been in the Legislature, and you pay no attention to it on earth. The Legislature will not do it, and it is useless to put this sort of a provision in the Constitution, which practice for years has demonstrated serves no good purpose. It means a mere consumption of time, and prevents the legislature devoting itself to the business for which it is assembled. Therefore I am opposed to the whole proposition, but as the lesser of the two evils I will vote for the substitute. I am requested, and promised to move the previous question.

MR. PETTUS—I wanted to ask the gentleman from Lee if under the present Constitution the subject matter of a bill is not required to be stated concisely in the caption of the bill.

MR. HARRISON—Always; and that is the provision in the present Constitution.

MR. CUNNINGHAM—Will the gentleman yield for a question?

THE PRESIDENT—The gentleman's time has expired, and he moves a previous question on the section and amendment.

Upon a vote being taken, the main question was ordered. Upon a further vote upon the adoption of the substitute offered by the gentleman from Pike, a division was called for, and by a vote of twenty-nine ayes and sixty-one noes, the substitute was lost.

MR. HARRISON—I now offer an amendment.

THE PRESIDENT—The previous question has been ordered.

MR. HARRISON—Only on the substitute.

MR. deGRAFFENREID—There is an amendment pending.

MR. O'NEAL—There is an amendment pending which has not been disposed of.

THE PRESIDENT—Does the gentleman offer a substitute to the amendment?

MR. HARRISON—Yes, sir.

The substitute was read as follows: "Amend Section 24 by striking out all after the word 'shall' on the first line of said section, and inserting in lieu thereof the following: 'Sign all bills and joint resolutions passed by the Legislature after having first carefully read and examined the same.'"

MR. HARRISON—Read the section as amended.

The section as amended was read as follows: "The presiding officer of each House shall sign all bills and joint resolutions passed by the Legislature, after having first carefully read and examined the same," etc.

MR. ESPY—I move to table the amendment offered by the gentleman from Lee.

Upon a vote being taken, a division was called for, and by a vote of sixty-one ayes and twenty-two noes, the motion to table prevailed.

MR. PETTUS—I move the previous question on the adoption of the amendment and the section as reported.

The main question was ordered, and upon a vote being taken on the amendment offered by the Gentleman from Hale, and a division was called for, and by a vote of twenty-nine ayes and seventy-four noes, the amendment was lost. The question recurring upon the section as reported, upon a vote being taken the section was adopted.

Section 25 was read as follows:

Sec. 25. The Legislature shall prescribe the number, duties and compensation of the officers and employes of each House, and no payment shall be made from the State Treasury or be in any way authorized to any person except to an acting officer or employe elected or appointed in pursuance of law.

MR. OATES—I move the adoption of the section.

Upon a vote being taken, the section was adopted.

MR. SAMFORD (Pike)—It is within a few minutes of adjourning time, and I have a report here from the Committee on Engrossment, and I ask unanimous consent to be allowed to make the report and let it lie over.



The report was read as follows:

Mr. President, your Committee on Engrossment have examined the following articles and find the same to be correctly engrossed: Local Legislation, State and County Boundaries, Banks and Banking.

Respectfully submitted,

W. H. Sanford.

Chairman.

MR. SAMFORD—Under the rules, I think it will lie over.

MR. O'NEAL—I move that immediately after adjournment, we take up those three reports and pass them or that we do so in the morning.

THE PRESIDENT—The regular order is the consideration of the report of the Committee on Legislative Department.

MR. SAMFORD (Pike)—I simply ask that it lie over under the rule.

MR. O'NEAL—We can take that up in the morning.

THE PRESIDENT—It can be done by unanimous consent, or by a suspension of the rules.

Thereupon the Convention adjourned until 3:30 o'clock.

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#### AFTERNOON SESSION

The Convention was called to order by the President, and the roll being called showed the presence of eighty-three delegates.

Indefinite leave of absence was granted Mr. Case on account of sickness in his family; indefinite leave was also granted to Mr. Norwood of Lowndes, on account of sickness; leave of absence for today and until 12 o'clock tomorrow for Mr. Dent; indefinite leave of absence granted to Mr. Miller of Marengo on account of sickness in his family; leave of absence for today to Mr. Weatherly on account of sickness; to Mr. Tayloe for yesterday.

MR. PILLANS—Learning that the Hon. Mr. Bankhead is in town, a distinguished Representative, I wish to offer a resolution tendering him the privileges of the floor.

THE PRESIDENT—The gentleman from Mobile asks unanimous consent to introduce a resolution. The chair hears no objection. The secretary will read the resolution.

The secretary read the resolution as follows:

Resolution 204: "Resolved. That the privileges of the floor of this Convention be and are extended to the Hon. J. H. Bankhead."

A vote being taken, the rules were suspended, and a further vote being taken, the resolution was unanimously adopted.

THE PRESIDENT—The special order for this evening is the consideration of the report of the Committee on Legislative Department. The secretary will read the next section.

The secretary read Section 26, as follows:

Sec. 26. The Legislature shall have no power to grant, or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee, or allowance to any public officer, servant or employe, agent or contractor, after services shall have been rendered or contract made; nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law.

MR. OATES—This section is changed to a considerable extent by the committee. It is intended to prevent the Legislature not only to deny to it power to grant or to authorize or require any county or municipal authority to grant, and the denial to any such municipal authority to grant any extra compensation, fee, or allowance to any public officer, servant or employe, agent or contractor, after services shall have been rendered or contract made. The latter part: "Nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law" is old. It was not deemed proper for the Legislature to pass a law touching any particular locality.

MR. COBB—May I ask the gentleman a question?

THE PRESIDENT—Does the gentleman yield?

MR. OATES—When I have finished my sentence. So as to allow any county or municipality to authorize or to require the payment of money, supplementary, for instance, to the amount agreed to be paid in the contract, or to supplement the salary of any State officer, and this is intended merely to deny that power, so that every one, whether an officer or a contractor, must stand upon the contract made and the amount of the salary or reward.

MR. COBB—I desire to ask my friend if that would interfere with the present law of allowing the sheriffs and clerks additional compensation. You know from time to time they are allowed certain additional compensation to their fees, ex officio allowances.

MR. OATES—You mean by country authority?

MR. COBB—By county authority.

MR. OATES—No; not for services rendered; it is only affecting contracts already made, or where some salaried officers, I don't think it would affect that power at all, for if it were found by the County Commissioners that the sheriff of the county had performed extra services in any way, it would be competent for them to pass an order compensating him from the treasury for it.

MR. SAMFORD (Pike)—May I ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield for a question?

MR. OATES—Certainly.

MR. SAMFORD—I just have one illustration in my mind with reference to it. I remember on one occasion where the solicitor of a Circuit was disqualified from the prosecution of a murder case by reason of his relationship. The court, of necessity, had to appoint an attorney to represent the State in the prosecution. Would this forbid making compensation for such services as that?

MR. OATES—No; that is an original undertaking. It is to prevent the increase of the pay or allowance to an officer beyond his salary or to allow a man more in a contract than he makes for his services performed to the State or county than he contracts for. It does not prevent original undertakings, like unto the question propounded by the delegate from Pike.

MR. HOWZE—I would ask whether there is in the section any provision against allowing the Legislature to increase or decrease the fees and compensation of officers during the term of office?

MR. OATES—There is nothing in it with respect to that strictly. By reading the section, the delegate will discover the entire scope of it. There is no case, I think to which it could be made to apply that is not expressed in it. For instance: "The Legislature shall have no power to grant, or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee or allowance, to any public officer, servant, or employe, agent or contractor, after services shall have been rendered, or contract made."

MR. HOWZE—That ought to be in this section or some other section.

MR. OATES—I don't think this restricts it as supposed. It prevents abuses, however, that have been practiced, I am informed, in some of the counties—possibly in the county of my friend from Jefferson. Mr. President, I move the adoption of the section.

MR. COBB—I wish to offer an amendment. I wish to call the attention of my friend and of the Convention to the fact.

THE PRESIDENT—Will the gentleman send up the amendment?

MR. COBB—It has not been prepared, and I will speak while it is being fixed up. I want to call attention to the fact that under this provision, it seems to me, that the Courts of County Commissioners or the Boards of Revenue in the different counties would be cut off from allowing to certain officers—the Sheriff and the Clerk, for example—ex officio compensation for the rendition of certain services, not provided for in their fee bill. This is a regular custom. Our County Commissioners allow Boards of Revenue every year allow, the Sheriff so many dollars to the Clerk so many dollars, in addition to the compensation they have received by way of fees to perform certain duties, the performances of which are not provided for in the fee bill.

MR. JONES (Wilcox)—I wish to offer an amendment.

The secretary read the amendment as follows: "Amend Section 26 by adding at the end thereof the following: 'Provided, nothing herein contained shall prohibit the County Board of Revenue or Commissioners' Court from granting to county officers such compensation as may be authorized by law.'"

MR. COBB—Either one of these amendments will do. It is only to provide against the possibility of cutting these officers off from their ex officio compensation that this amendment is offered. They have to perform duties for which they ought to be paid, and for which there is no provision in the fee bill, but there is a provision in the general law, allowing the Boards of County Commissioners and Boards of Revenue to pass upon these questions, and to allow them compensation ex officio not exceeding a certain amount.

MR. OATES—Mr. President, I think that the amendment is not quite to the point which the gentleman is aiming at.

THE PRESIDENT—The gentleman from Wilcox has offered an amendment to the amendment.

The amendment was read as follows: "Providing, this section shall not apply to allowances made by Commissioners' Courts to county officers for ex officio services."

MR. COBB—I will accept that.

MR. OATES—Allowance is made for ex officio services. I have no objection to that. I am willing to accept it. I think Boards of Revenue include "County Commissioners or Boards of Revenue."

MR. COBB—All “Boards of Revenues.” I will accept the amendment. I will withdraw the first amendment and accept that offered by the gentleman.

MR. OATES—I will accept it for the committee, if there be no objection.

THE PRESIDENT—The gentleman asks unanimous consent to accept the amendment offered by the gentleman from Wilcox. Is there objection? The chair hears none.

MR. OATES—I move the the previous question on the adoption of the section as amended.

MR. HOWZE—Let me get this amendment in: “Amend by inserting after the word ‘made’ in the fifth line, the words ‘nor to increase or decrease the fees or compensation of such officers during their term of office.’”

THE PRESIDENT—The question is upon the amendment offered by the gentleman from Jefferson. Are you ready for the question? As many as favor the adoption will say aye, and those opposed no. The ayes have it. The question now is on the adoption of the section as amended. On a vote the section as amended was adopted.

THE PRESIDENT—The Secretary will read Section 27.

MR. OATES—Some of the delegates think Section 26 was not adopted.

THE PRESIDENT—The Chair put the question and it was adopted.

MR. WADDELL—The gentleman from Wilcox offered an amendment and the gentleman from Jefferson offered an amendment to the amendment.

THE PRESIDENT—The Chair will state for the information of the delegate from Russell that the Chairman of the Committee asked unanimous consent of the Convention to accept the amendment. No objection was made, and it was accepted by unanimous consent. The Chair submitted to the Convention the question of the adoption of the amendment offered by the gentleman from Jefferson, and submitted the question of the adoption of the section as amended.

MR. deGRAFFENREID—I ask unanimous consent to be allowed to send up a short ordinance, in order that it may be referred to the proper committee.

THE PRESIDENT—The gentleman asks leave to send up a short ordinance.

The Clerk read the ordinance as follows:

Ordinance No. 422, by Mr. deGraffenreid:

An ordinance to repeal Sections 8 and 9 of the Article heretofore adopted by this Convention on the subject of the Banks and Banking.

Be it ordained by the people of Alabama in Convention assembled, That Sections 8 and 9 of the Article heretofore adopted by this Convention on the subject of Banks and Banking be and the same are hereby repealed.

MR. deGRAFFENREID—And that it be referred to the Committee on Amending the Constitution and Miscellaneous Provisions.

THE PRESIDENT—In the opinion of the Chair the ordinance should be referred to the Committee on Banks and Banking. The Chair will submit the question of reference to the Convention if so desired.

MR. deGRAFFENREID—I ask that it be sent to that Committee, because the Committee on Banks and Banking has already reported on this matter.

THE PRESIDENT—In the opinion of the Chair, after a Committee has examined a question, and has submitted a report contrary to the ordinance proposed, it would not be proper to submit it to another committee.

MR. FLETCHER—The idea of the Chair is correct, the question has been heard by this Convention, both as an original proposition and then on the motion to reconsider, and it seems to me that if the Convention attempts to undo what it has done in this matter, our work has been useless and it strikes me that this comes directly in line with the duties of the committee on Banks and Banking, and that it would be rather discourteous to refer it to some other Committee.

THE PRESIDENT—I will read rule 47.

The President read Rule 47 and stated the motion of the gentleman from Hale, that the ordinance be referred to the Committee on Amending the Constitution and Miscellaneous Provisions. A vote being taken the motion was lost and the ordinance was referred to the Committee on Banks and Banking.

The Secretary then read Section 27 as follows:

Sec. 27. During any regular session of the legislature the aggregate appropriations made shall not exceed in amount the income from the revenues of the State for the current fiscal year, as estimated by the Governor and Auditor.

MR. PETTUS—I have an amendment to offer.

The Secretary read the amendment as follows: Amend Section 27 by striking out the words “for the current fiscal year” and inserting in lieu thereof “for the last four preceding fiscal years.”

MR. PETTUS—It seems to me that there is an apparent ambiguity—it might be construed, or might not. I submit if that construction be put upon it, the legislature would be limited in appropriations not to exceed the income for the year in which it is sitting, and as it is to be held every four years it seems to me it ought to have the right to appropriate the income for four years.

MR. OATES—I rise for the purpose of moving an amendment by inserting the word “annual” between the words “aggregate” and “appropriations,” in the first line.

MR. PETTUS—It reads then “aggregate annual appropriation?”

MR. OATES—Yes.

MR. PETTUS—I will accept that.

THE PRESIDENT—The gentleman from Limestone asks unanimous consent to accept the amendment offered by the gentleman from Montgomery. The Chair hears no objection.

MR. OATES—This section is entirely new, and at the time it was adopted, the Committee did not know, could not know until afterwards, that four year sessions of the legislature would be adopted, and hence they could not construct it so as to allow for that. My friend, the delegate from Sumter (Mr. Chapman) was the author of the ordinance from which this was largely taken, and I propose to yield the floor to him.

MR. CHAPMAN—The only question that I desire to ask the distinguished gentleman from Montgomery is whether or not the treasurer was not included in “as estimated by the Governor and Auditor.” It is not in the copy that I have here.

THE PRESIDENT—Does the gentleman from Limestone withdraw his amendment?

MR. PETTUS—On looking at it further I do not think the suggestion of the gentleman from Montgomery will answer the purpose and it will not clear up the ambiguity. I have asked unanimous consent to accept it, but I don’t think it meets the difficulty. I will withdraw it, however, and let some one else offer an amendmnet that will clear it up.

THE PRESIDENT—Does the gentleman from Montgomery offer the word “annual” as an amendment?

MR. OATES—Yes, sir.

THE PRESIDENT—The gentleman from Montgomery asks unanimous consent to insert the word “annual” between the words “aggregate” and “appropriation” in the first line.

MR. OATES—I did not understand the suggestion of the gentleman from Sumter just now.

MR. CHAPMAN—“Treasurer” is left off.

MR. OATES—Because the statute does not require the Treasurer to make any statement to the Governor at all.

MR. PETTUS—Don't you think it would be better to strike out the word “aggregate” and let it read “annual” appropriations, that means annual aggregate appropriations limited to one year's income.

MR. OATES—I have no objection, that won't impair the sense, the word “appropriations” being plural embraces all.

MR. WILLIAMS (Marengo)—I would like to ask the gentleman from Montgomery a question.

THE PRESIDENT—Does the gentleman from Montgomery yield to the gentleman from Marengo?

MR. OATES—I have no objections, but I don't yield the floor.

MR. WILLIAMS—You intend the estimate for the four years shall be based on the succeeding year, or say for 1903 shall be based on 1904 and 1904 on the succeeding year?

MR. OATES—The statute now makes it the duty of the Auditor to report to the Governor his estimate of the annual income for the two succeeding years, and the Governor has in his communication with the legislature to inform him of those years, and if it be one year, two or four years, whatever number of years, you cannot tell exactly, because you do not know what time the legislature will meet and it is to be presumed in four years. There is no other construction other than the estimates should be made up to the beginning of the legislature.

MR. CHAPMAN—Mr. President, the suggestion made in this section of the report was made in order to limit the appropriation of the legislature, in order that the legislature might not, in its extravagance, appropriate sums largely beyond the estimated income of the State during the current fiscal year. I don't know, Mr. President, that there has been in either the Constitution or the laws any authority or power to limit the legislature in its appropriation. Now, this section was introduced by me with the concurrence of my colleagues, in order to limit the appropriation



in the aggregate during any regular session of the legislature to whatever amount might be estimated would be the income of the State as estimated by the Governor, the Auditor and the Treasurer. These three gentlemen know more, or should know more, and it is to be presumed that they do know more of the income of the State than any other three persons in the State and the Legislature ought not to be allowed to go beyond the estimated income of the State for the year. Now, whether it is one year, two, three or four years, according to the terms of the Legislature—but whatever it is this section as it now reads: "During any regular session," and I will call the attention of the Convention to the fact that it does not limit the appropriation of any special session of the Legislature that may be called by the Governor under the authority given in this Constitution. "During any regular session of the Legislature, the aggregate appropriations made shall not exceed in amount the income from the revenues of the State for the current fiscal year, as estimated by the Governor and Auditor."

MR. OATES—The Treasurer is not charged by statute with that. He has nothing to do with it.

MR. CHAPMAN—That is true, but my recollection is that in the committee, the section was passed to include the Treasurer because he was the one most interested in the finances of the State.

MR. OATES—That was discussed, but not adopted, because the statute did not require him to make any estimate.

MR. CHAPMAN—Well, possibly not, Mr. President, and gentlemen, the Legislature of Alabama ought not to be permitted to go beyond the estimate of the Governor and of the Auditor as to the income of the State during the fiscal year for which they make that estimate, whether it be one, two, three or four years. In this way, the Legislature will certainly be restrained within the ability of the State to pay its obligations. There is an amendment here which has been suggested, to amend Section 27 of the report of the Committee on Legislative Department by inserting after the word "year" in the third line, the words "for which such appropriations are made." I am not in accord, Mr. President, with that amendment, because if it is limited to that—"for which such appropriations are made" it might entirely destroy the purposes of the section.

MR. REESE—Will you allow me to ask a question.

THE PRESIDENT—Does the gentleman yield?

MR. CHAPMAN—Certainly.

MR. REESE—I will ask the gentleman if the insertion after the word "made" in the first line of Section 27 of the words "for

any one year" during any regular session of the Legislature, the aggregate appropriations for "any one year" shall not exceed, and so forth. Will not that cover the objection?

MR. CHAPMAN—I am inclined to think that would cover it. The only purpose I had in making this proposition was that at no regular session of the Legislature should it be authorized to go beyond the estimated receipts of the State of Alabama for any particular year. Those receipts, as estimated by the Governor and Auditor as it is here.

MR. HARRISON—With the gentleman's permission I desire to ask him if it would not be covered by simply striking out the words "for the current fiscal year," without those words in it would not that cover your view?

MR. CHAPMAN—With due respect to the gentleman from Lee, I do not think that would meet it. My idea in making the suggestion was that during each and every year there would be an estimate made by the Governor, the Auditor and Treasurer as to how far the Legislature could go in making its appropriation, general and specific upon the treasury, and that it should not go beyond the estimated receipts of the State.

MR. HARRISON—If you had the general terms not to exceed the amount of income of the revenues of the State, that would be either by the year or in any other way.

MR. CHAPMAN—That might be too broad. The only purpose in the world, Mr. President and gentlemen of the Convention, was to limit the power of the Legislature to go beyond the income of the State, whatever that may be, whether great or small, no matter what it is, so that there will not be any appropriations made beyond what the State can pay. That was the only purpose.

MR. COLEMAN (Greene)—I offer an amendment, Mr. President.

THE PRESIDENT—The Chair had recognized the gentleman from Wilcox.

MR. JONES (Wilcox)—I will ask the gentleman from Sumter if he will accept this amendment: "During any regular session of the Legislature, the appropriations for each four years before the next meeting of the Legislature shall not exceed in amount the income from the revenues of the State for each of said years respectively, as estimated by the Governor and Auditor."

MR. COLEMAN (Greene)—That covers the amendment that I was prepared to offer.

MR. OATES—I will accept that.

MR. CHAPMAN—I have no objection in the world.

MR. MERRILL.—I move to lay the section and all the amendments on the table.

A vote being taken, the motion to table was lost.

MR. WHITE.—It does seem to me that this section confers very extensive powers upon the Auditor and Governor, and takes away very important powers from the legislature. In other words they cannot make an appropriation that does not meet with the views of the Governor and Auditor combined. If there should be an unfriendly Auditor to some great interest of the State, by reducing his estimate he can absolutely hold the legislature of the State in his hand, and so could the Governor. Then, in addition to that, if the legislature should desire to rebuild the Capitol and issue bonds, they could not make an appropriation for that purpose, because it would exceed necessarily, the income which the Auditor and Governor would make as an estimate for the current year, or any year. It would tie the legislature absolutely, leaving them powerless in the hands of the Governor and the Auditor. For one, I would rather risk the legislature of the State, I would rather risk their patriotism, I would rather risk their regard for the people of the State, and the welfare of the State, than risk either one or both of these officers, and I think it would be a very unwise and a very dangerous power to be given them and taken away from the legislative branch of the government.

MR. JONES (Montgomery).—Anything that comes from my friend from Sumter, who is so careful and conscientious, is deserving of careful consideration and I regret exceedingly that I feel impelled to oppose this section in toto. The language is "the legislature shall not appropriate any money beyond the current revenues as estimated by the Governor and Auditor." Now, leaving aside for the moment other objections, these estimates, especially when the legislature meets only once in four years, are largely conjectural, it would depend upon the sanguineness of the two men. They might say property is increasing in value, going up 10 per cent in Alabama, and you can safely spend so and so, or they might be pessimists and take the opposite view, and in either event greatly err as to the amount of receipts. Now, the Governor already has veto power, and it seems to me that we are unwisely trammeling the legislature. There is one other objection to it. If this is a good principle, the legislature ought not to appropriate more money at a special session than a regular session, and while I sympathize with the motive that induced this section, it seems to me that the Convention ought to vote it down. It is utterly impracticable to accomplish the purpose it is intended to subserve.

MR. OATES.—I do not think that the objections made either by the delegate from Jefferson nor by my colleague from Mont-

gomery are sound. Now the statutes, as we find them, as they now exist, require the Auditor to make his estimates, the amount of income and expenditures and make report to the Governor, and the Governor is required to give that information, or whatever his opinion may be based upon it or otherwise, upon those subjects to the legislature. Now, it is not such idle speculation. I think these officers could not, of course, estimate with that accuracy for four years that they can for two years or one year, but it is perfectly safe, and if their estimates of the amount of income are less than they prove to be, does not injure the State or anybody. Most likely, it will be because these careful painstaking officers are not apt to be seized with a fit of enthusiasm as to the vast amount of income and exceed it greatly. They are usually conservative, and estimate under what they think will be the probably income rather than above it. There is no such thing as putting the legislature in the power of the Governor and Auditor at all. It doesn't increase their power over the legislature in the slightest—not a particle. The law now requires of those officers to make these estimates, it is only a difference in the length of time, so far as their work goes, and the question of the payment of interest on bonds is not involved. Why, the section of this Convention, which directs appropriations, includes an appropriation every time for the payment of interest on bonds. That has to be made out of the revenues along with such other expenditures as are found necessary and there is nothing dangerous in it at all. It is merely a safeguard against excessive appropriations.

MR. LONG (Walker)—Suppose the Auditor and Governor should take issue as to the amount of income?

MR. OATES—Well, the Governor holds the rank there.

MR. LONG—Therefore, you leave it to one man, and not to the Legislature?

MR. OATES—Not at all. It is easy to suppose a case whenever a gentleman wishes to make an argument, but it doesn't follow at all. I remember in one instance I differed with the Auditor a little and made my estimate a little lower than his. My motive was to be extraordinarily conservative and to be sure to be right. The Auditor though was a conservative man and his information was more extensive and more minute than mine. The duties of that office are such that he has every opportunity that an officer can have to know the probable income each and every year and the probable amount of expenditure. Now, sir, in the last Legislature, composed in the main of most excellent gentlemen and many that are very able men—did make so far as reported in the papers, for I have never examined otherwise—excessive appropriation in the aggregate, more than the amount of revenue probably would justify. That is what was stated, and to such an extent

that it necessitated a bill which my friend, the delegate from Lee, who sits in my rear, being a Senator, constructed and introduced and it passed the Senate and House, to cut down the aggregate appropriations, and keep within the ability of the treasury to meet them. Now, sir, that was not because that Legislature was composed of inferior men, not at all. It was the most natural consequence that you ever find in the Legislature. The preceding Governor, it seems, had exerted his energies to accumulate all the money possible in the treasury and he had succeeded in getting a large amount of it with an increased amount of taxation, and there was a vast amount of money in the treasury, supposed to be much more than was needed, much more than would meet the ordinary wants of the State. Wherever that has occurred in the history of our government, State and Federal, wherever you pile up money in the treasury, the Legislative body that succeeds, that comes in next after that is understood—I don't care how good the personnel of it is—they always go in for making large appropriations, numerous appropriations. Why, sir, that has been the case in the Federal government. Whenever you want to find a vast amount of appropriations made by the Congress of the United States, you will always find it, when it is supposed there is an excess of revenues, surplus revenues in the treasury, more than the government needs, and to that I attribute the enthusiasm of the Legislature in making the appropriations in the aggregate probably a little too large. Now, this is a proper precaution. It is a proper limitation because these officers, the Auditor and Governor, are charged, it is their statutory duty, the Auditor to inform the Governor and the Governor to inform the Legislature of the probable necessities and the amount of income necessary to meet it, or the amount of income with which they will have to deal in order to meet the necessities. Now, sir, it gives them no more power. Those officers are in the attitude where they can give that information to the Legislature when no member of it has it or can have it, because he has not the opportunity to get it. That is all of it. There is nothing in this that is at all dangerous. I think it is a very good provision, and the substitute offered by the delegate, General Jones, covers it completely, and it is accepted and I do not see any room for speculation and I move the previous question upon the report of the committee and the amendment.

MR. PETTUS—Please withdraw that for a moment. I desire to offer an amendment, which will not limit the Legislature to the specific year for which the appropriation is made, but will prevent one Legislature from anticipating revenues of the other Legislature, and will give them authority to distribute the funds for the four years as they see fit.

MR. OATES—Allow the Legislature to anticipate or prohibit?

MR. PETTUS—To prohibit, I mean to say. I will ask the gentleman to withdraw his motion and allow the Clerk to read the amendment.

MR. OATES—Certainly, I have no objection to its being read.

The Secretary read the amendment as follows: "During any regular session of the Legislature the aggregate appropriations made shall not exceed in amount the income from the revenues of the State available before the last day of the next regular session of the Legislature, as estimated by the Governor and Auditor."

MR. OATES—I have great respect for the ingenuity and aptitude of the gentleman from Limestone, but I cannot see the necessity for it. I think it is clear and means that substantially without being tied up, especially as his amendment proposes.

MR. PETTUS—I suggest to the distinguished Chairman of the committee the amendment of the gentleman from Wilcox will prohibit the Legislature from appropriating for the four succeeding years any amount except the amount of revenue for that year as estimated by the Governor and Auditor. My proposition is that the great law-making body of this State should have the right to dispose of the revenues of this State for the ensuing four years as they see proper, and if there is a surplus in the next year after the Legislature adjourns or in any other one of the years, above the current expenses of the State government, they ought to have a right to appropriate that surplus in any one of the four years. The only legitimate reason for putting the Legislature in such a straight-jacket as this is to prevent them from anticipating the revenues of the next Legislature.

MR. OATES—I do not like to cut off gentleman from their opportunities, but if that is in order I am willing to include it and will insist on my motion upon the section and amendments.

THE PRESIDENT—The question is on the substitute of the gentleman from Limestone to the amendment of the gentleman from Wilcox, and the gentleman from Montgomery moves the previous question.

MR. WATTS—I move to lay the section and all the amendments on the table.

MR. OATES—That is not in order. That has been done before and voted down. This amendment, at a former stage motion was made to lay the section and pending amendments on the table, and that was voted down.

THE PRESIDENT—The chair will hold that a motion to lay the section as reported by the committee and the amendment offered by the gentleman from Wilcox, as the chair now recollects has been voted down.

MR. WATTS—There has been other business—another section offered.

THE PRESIDENT—The fact that there has been other business will not change it. If the gentleman will confine his motion to the substitute of the gentleman from Limestone it might be in order.

MR. WATTS—No, sir; I want the whole thing laid on the table.

THE PRESIDENT—The question is, shall the main question be now put?

The main question was ordered. The question then recurred on the substitute offered by the gentleman from Limestone, and a vote being taken the substitute was lost.

The question then was on the substitute offered by the gentleman from Wilcox, and on a division there were sixty-one ayes and twenty-one noes.

MR. LONG (Walker)—I call for an aye and no vote.

THE PRESIDENT—The ayes and noes are called for. Is the call sustained?

MR. CHAPMAN—I rise to a point of order. It is too late now to call for the ayes and noes—but still I have no objection.

MR. LONG—I make the point of order that there is no quorum voting.

THE PRESIDENT—The question is on the motion of the gentleman from Walker for an aye and no vote.

MR. LONG—My point of order is that no quorum voted, and I ask a verification of the vote by an aye and no vote.

THE PRESIDENT—It appears that there are sixty-one ayes and twenty-one noes, and the substitute is adopted. The chair overrules the point of order that no quorum voted. It appears that a quorum did vote.

MR. LONG—Is there no way to ascertain that fact?

THE PRESIDENT—The vote show it.

MR. LONG—There is no way to question the vote.

THE PRESIDENT—The gentleman can question it. Does the gentleman desire to verify the vote?

MR. LONG—Yes, sir; I do.

THE PRESIDENT—The chair will submit the question to the Convention. As many as favor the adoption of the substitute

will please rise and remain standing until they are counted. The question is on the substitute offered by the gentleman from Wilcox. All delegates are required to vote.

MR. LONG—I call for an aye and no vote.

THE PRESIDENT—The chair submitted the call of the gentleman for an aye and no vote to the Convention and the call was not sustained.

A vote being taken, resulted in sixty-one ayes to sixteen noes.

THE PRESIDENT—The chair decides that there are a sufficient number of delegates in the Convention who have declined to vote to make a quorum, and the substitute is adopted. The question now is on the section as amended.

MR. O'NEAL (Lauderdale)—I ask for an aye and no vote on the adoption of the section.

The call for an aye and no vote was sustained.

On request of the gentleman from Jackson, the section as amended was again read by the clerk.

MR. PETTUS—Is it open for discussion now?

THE PRESIDENT—The previous question has been ordered.

MR. LONG—I rise to a point of order. No quorum voted on the amendment, and it is claimed that it is adopted. I ask for a roll-call so that the amendment can be legally adopted.

MR. CHAPMAN—The ayes and noes have been called on this vote and it will determine whether or not there is a quorum present.

The result of the roll call was as follows:

#### AYES.

Messrs. President,	Craig,	Glover,
Altman,	Cunningham,	Graham, of Montgomery,
Barefield,	Davis, of DeKalb,	Graham, of Talladega,
Bethune,	deGraffenreid,	Grayson,
Boone,	Duke,	Greer, of Calhoun,
Browne,	Eley,	Greer, of Perry,
Burns,	Eyster,	Harrison,
Byars,	Espy,	Heflin, of Randolph,
Cardon,	Ferguson,	Hodges,
Chapman,	Fitts,	Howell,
Cobb,	Fletcher,	Howze,
Coleman, of Greene,	Foster,	Inge,
Cornwall,	Freeman,	Jackson,



Jenkins,	Oates,	Sentell,
Jones, of Wilcox,	Opp,	Sloan,
Kirk,	Palmer,	Smith (Mobile),
Knight,	Parker (Cullman),	Smith, Mac. A.,
Kyle,	Parker (Elmore),	Smith, Morgan M.,
Leigh,	Pearce,	Sorrell,
Locklin,	Pillans,	Spragins,
Long (Walker),	Pitts,	Stewart,
Macdonald,	Porter,	Studdard,
McMillan (Baldwin),	Proctor,	Taylor,
McMillan (Wilcox),	Reese,	Vaughan,
Malone,	Reynolds (Henry),	Whiteside,
Martin,	Rogers (Lowndes),	Williams (Barbour),
Maxwell,	Rogers (Sumter),	Williams (Marengo),
Miller (Wilcox),	Samford,	Wilson (Clarke),
Moody,	Sanders,	Wilson (Wash'gton),
Murphree,	Sanford,	Winn,
NeSmith,	Searcy,	

Total—92.

#### NOES.

Banks,	Jones, of Bibb,	Reynolds (Chilton),
Beddow,	Jones, of Montgomery,	Robinson,
Blackwell,	Kirkland,	Selheimer,
Brooks,	Lomax,	Sollie,
Bulger,	Merrill,	Spears,
Carmichael, of Colbert,	Norman,	Thompson,
Davis, of Etowah,	O'Neal (Lauderdale),	Waddell,
Foshee,	O'Neill (Jefferson),	Watts,
Haley,	O'Rear,	Weakley,
Hood,	Pettus,	White,

Total—30.

#### ABSENT OR NOT VOTING.

Almon,	Gilmore,	Lowe (Lawrence),
Ashcraft,	Grant,	Miller (Marengo),
Bartlett,	Handley,	Morrisette,
Beavers,	Heflin, of Chambers,	Mulkey,
Burnett,	Henderson,	Norwood,
Carmichael, of Coffee,	Hinson,	Phillips,
Carnathan,	Jones, of Hale,	Renfro,
Case,	King,	Walker,
Cofer,	Ledbetter,	Weatherly,
Coleman, of Walker,	Long (Butler),	Willet,
Dent,	Lowe (Jefferson),	Williams (Elmore),

So the section as amended was adopted.

MR. COLEMAN (during the call of the roll)—I am willing to vote if I can be satisfied as to the substitute. I want to know what it means. As I understand it there may be a surplus in the treasury each year of \$50,000 not appropriated, and it can be carried over four years, and there is no way of reaching it at all, and if that is what it means, I will vote aye.

MR. BLACKWELL—The gentleman has not permission to explain his vote, and it is out of order.

MR. COLEMAN—Suppose it is not all used up in one year—

THE PRESIDENT—The gentleman from Morgan makes the point of order that it is not in order for a delegate to explain his vote without the permission of the Convention.

MR. WHITE—I rise to a point of order. The gentleman from Greene is not explaining his vote, but explaining why he didn't want to vote.

MR. COLEMAN (Greene)—I vote aye, if it provides for the Legislature to use the money if there is a surplus carried over from year to year.

THE PRESIDENT—Does the gentleman desire to have it read over again?

MR. COLEMAN—Yes.

The section as amended was again read by the Clerk.

MR. COLEMAN—That is exactly what I said, if there is a surplus there, you cannot get at it in one hundred years.

THE PRESIDENT—It is not in order to explain a vote. How does the gentleman vote?

MR. COLEMAN—I will vote aye.

MR. LONG (Walker)—I desire to change my vote from no to aye for the purpose of moving a re-consideration on tomorrow morning.

MR. COLEMAN—I move to reconsider the vote by which the section was adopted. I do so for the purpose of offering an amendment authorizing the legislature to appropriate any surplus that may have accumulated in addition to the estimated revenues. If this Convention is satisfied, that the surplus, if any, should remain, is at the disposal of the legislature, why I would be glad to see the motion to reconsider voted down, but as I heard that section read it may accumulate there until the next Convention meet again.

A VOICE—Four years?

MR. COLEMAN—Four years don't reach it, it will remain there until the next Convention meets to authorize the appropriation of it. That is the way it strikes me and that is the reason I hesitated to vote. Now, if I am mistaken in my construction, I would like for my motion to reconsider to be voted down, but if I am right, that is the condition, you will place the Treasury in, with any surplus that may accumulate there.

MR. LONG (Walker)—It would take a suspension of the rules at this time to move to reconsider.

THE PRESIDENT—The point of order is well taken.

MR. COLEMAN—Then I move the suspension of the rules. I want the question settled and that is the only purpose I have in view.

MR. PILLANS—Would it not be better to let it go over until tomorrow, and then bring in your amendment.

MR. COLEMAN—I will let it go over. I give notice that I will make a motion in the morning to reconsider, and in the meantime, we will have time to consider it.

THE PRESIDENT—The Clerk will read Section 28.

The Clerk read Section 28 as follows:

Sec. 28. All stationery, printing, paper and fuel used in the legislative and other departments of government shall be furnished and the printing and distribution of laws, journals, department reports and all other printing and binding and repairing and furnishing the halls and rooms used for the meeting of the legislature and its committee shall be performed under contract, to be given to the lowest responsible bidder below a maximum price, and under such regulation as shall be prescribed by law; no member or officer of any department of the government shall be in any way interested in such contracts, and all such contracts shall be subject to the approval of the Governor, Auditor and Treasurer.

MR. PILLANS—I have an amendment to offer.

MR. CHAPMAN—Allow me to ask a question, whether or not there is a little mistake here in the fourth line as read by the Clerk, whether it is "committee" or "committees."

THE CLERK—It is "committees"—plural.

MR. CHAPMAN—It is "committee" in my copy.

The Clerk read the amendment offered by Mr. Pillans, as follows: "Amend Section 28 by adding at the end thereof, the following words: 'The legislature may, however, provide that for such supplies or printing no bid from any non-resident person or foreign

corporation shall be considered' and by striking out the period at the end of the Section and inserting a semi-colon instead."

MR. PILLANS—I have nothing to say more than is said by the amendment which is offered. The section as it is reported is a good section. It is in line with the requirement of the Federal government and State governments generally in all public contracts that they shall be given to the lowest responsible bidder, but it occurs to me in our experience in Alabama, particular in the matter of printing, recently, does not justify our making a hard and fast rule, that we shall give to the lowest bidder in Jacksonville, Florida, in Nashville, Tennessee, or in Buffalo, N. Y., the public printing, and send to these distant points the archives clear beyond the boundaries of the State. I confess if I were a member of the legislature, and the Constitution did not forbid it, and I were inspired by the very motives which inspired this Committee, I should, unless there were evidences that there was adequate printing offices in the State, or their prices excessively high, I would be quite unwilling to let the printing go beyond the borders of the State. With the variety of industries and the number of cities and towns and printing houses in Alabama, and I speak of printing particularly because that is a matter that has come considerably under my notice, it does seem to me that the legislature ought to be permitted to provide if it sees fit in its wisdom so to do from time to time either that the bidding may come from the entire Union or that it may be confined to the people who are domiciled in the State, and that is the object of the amendment.

MR. JONES (Montgomery)—Will the gentleman from Mobile permit me to ask a question.

MR. PILLANS—Certainly.

MR. JONES—I think it an excellent idea, but would it not be a good idea to put a provision in there in case of combination to put the prices up. In this case as it is now, it is the lowest bidder and there are only three or four in the State, and if they combine the legislature is bound to take it at their prices.

MR. PILLANS—I agree with the views of my distinguished friend, and I would be glad if an amendment could be offered such as suggested by the gentleman, but the amendment as I offered it does not undertake to legislate, but to enable the legislature to see if they can find a plan to confine it to the State, unless they find it should go into the hands of a trust. It is not intended as legislation but as fundamental law.

Mr. Miller of Wilcox, here took the Chair.

MR. REESE—A great deal has been said in this hall about the Legislature of this State. I don't believe that any State has

ever had better Legislatures than those of Alabama which have assembled in this historic hall. Take this body and surround it by the conditions and temptations that have confronted that body, and this Convention would be led along the same paths that the Legislature has traveled.

MR. ESPY—I arise to a point of order. The gentleman is not addressing himself to the question before the House. He is discussing the character of the Legislature.

THE PRESIDENT PRO TEM—I will wait on the gentleman a little longer.

MR. REESE I do not admit the right of gentlemen to dictate what I shall say in this Convention. I am holding myself strictly to the matter before this Convention. Here is a proposition, and I suppose this will be followed by other amendments to hamper and particularize the conditions under which the Legislature shall make these contracts. This is a Constitutions Convention, Mr. President. It is not a legislative body, and there are important duties that remain for a Legislature to perform, and this Convention should not usurp those functions. Mr. President, it would be a reflection upon the intelligence of the people of Alabama, and those who may come here in the future to honorably represent the State as they have in the past, to hamper and load them down with these conditions. This provision leaves to the Legislature some discretion, and I contend that they are equal to and will rise to the full measure of their duty. We do not know what the conditions of the future may be, and therefore let them be left to the wisdom of the Legislature. In conditions arise such as the gentleman from Mobile contends for, the Legislature in its intelligence and wisdom can provide for it. That body may perhaps have made some mistake in a recent printing of the Acts, but we all make mistakes. Mr. President, I am afraid that even this Convention before it shall have adjourned, will be charged with having made some mistakes, and I believe we will make a mistake now, if we hamper down the Legislature with details which may be inconvenient and expensive to the State in the future. I now move the previous question on the pending amendment and the Section as reported by the Committee.

MR. BEDDOW—I ask the gentleman to withdraw that just one moment.

THE PRESIDENT PRO TEM—Does the gentleman yield?

MR. REESE—I have make my motion.

Upon a vote being taken, a division was called for, and by a vote of 49 ayes and 38 noes the main question was ordered.

MR. BEDDOW—I desire to offer a substitute.

MR. SAMFORD (Pike)—I object. I rise to a point of order. The previous question has been ordered, and after the previous question is ordered no substitute or amendment can be offered.

THE PRESIDENT PRO TEM—The point of order is sustained.

MR. O'NEAL—I would like to ask the Chairman of the Committee a question for information. As I understand it this Section reported by the Committee is the exact Section found in the Constitution of 1875, is it not?

MR. OATES—It is.

MR. O'NEAL—Word for word, isn't it.

MR. OATES—Yes, sir, and I will state in that connection in my absence, that it is so reported—

MR. WADDELL—A point of order. The previous question has been ordered.

MR. O'NEAL—Some gentlemen never want anybody to talk in this Convention but themselves.

MR. FITTS—I make the point of order that there is nothing in order, but a vote on the main question.

THE PRESIDENT PRO TEM—The point of order is well taken.

MR. SAMFORD (Pike)—I make the point of order that the Chairman of the Committee is entitled to close on this matter after the previous question is ordered.

MR. LONG (Walker)—I make the point of order that the Chair itself has decided that the motion for the previous question was called.

MR. FITTS—No he didn't. The previous question was ordered.

THE PRESIDENT PRO TEM—The point of order made by the gentleman from Pike is well taken.

MR. O'NEAL—I rise to a point of order. The Chairman of the Committee has the right to close this debate after the previous question is ordered.

THE PRESIDENT PRO TEM—That is what the Chair has decided.

MR. BULGER—A parliamentary inquiry. I would like to know if the motion for a previous question extended further than the substitute.

THE PRESIDENT PRO TEM—Only to the substitute.

MR. REESE—The previous question was called on the Section and substitute.

To which there were expressions of dissent.

THE PRESIDENT PRO TEM—The Chair understood the previous question to apply only to the substitute.

MR. REESE—The motion applied to the pending amendment and the Section.

THE PRESIDENT PRO TEM—The gentleman from Montgomery has the floor.

MR. GREER (Calhoun)—A point of order. The Chairman of the Committee has a right to speak to the main question after the previous question is called, but not to the substitute.

MR. REESE—I ask for a reading of the stenographer's notes.

MR. JONES (Montgomery)—I desire to ask the Chairman a question, which he can answer later on, as I do not want to interrupt him. Is this Section not in the exact language of the Constitution, and under that did not the State have to send its printing to Florida because the Floridian was the lowest bidder?

MR. OATES—In reply to that question I will state—

MR. CHAPMAN—A parliamentary inquiry; Is the gentleman from Montgomery who is Chairman of the Committee, now speaking upon the amendment or on his right to close the debate on this question?

MR. REESE—I rise to a question of information. What is the ruling of the Chair?

THE PRESIDENT PRO TEM—In the opinion of the Chair the previous question was ordered upon the substitute.

MR. REESE—I ask for the reading of the stenographic report, as it will show what my motion was.

MR. BEDDOW—I object.

THE PRESIDENT PRO TEM.—We will be governed by the reading of the Journal.

MR. REESE—I ask for the reading of the Journal.

MR. OATES—I think you will find that the delegate from Dallas moved the previous question on the section and pending amendment.

The Journal was read, stating the motion to be for the previous question on the section and amendment.

MR. OATES—I have but little to say on this section, and by way of answer to the question of my colleague from Montgomery, if printing had not been given to a house in Jacksonville, Florida, not long since? I will say that such is my information, and furthermore I heard a good deal of complaint about its being unsatisfactory. But the section requires not the letting of printing acts and Journals, etc., to any bidder, but to the lowest responsible bidder. Now, if those who have charge of the letting out of the printing do their duty they should have proper bonds and obligations from the lowest responsible bidder insuring that the work will be well done, and done in accordance with the law. I oppose for the committee the amendment offered by the delegate from Mobile, only for the reason that the gentlemen who examine this will find that it leaves the power in the Legislature to regulate this matter. It is unnecessary to add any amendment. It is the section which we find in the existing Constitution, and it ought not to be amended. If it has been improperly or defectively executed, unless there is some internal fault in this section, and none occurs to me, vests the Legislature properly with the power, and if the executive officers do their duty under the provisions of the Constitution, it is as good a law as can be made upon that subject. I do not know of anything that is necessary to be added to this statement, and therefore will not consume further time. I am opposed to the amendment whether it be offered as a substitute or an ordinary amendment to the section reported by the committee.

The question being upon the amendment offered by the gentleman from Mobile (Mr. Pillans) the vote being taken the amendment was lost. The question recurring upon the section as reported by the committee, upon a vote being taken the section was adopted.

MR. BEDDOW—I voted aye on that proposition, and I give notice now that I will move a reconsideration of it at the morning session tomorrow.

MR. SAMFORD (Pike)—I move that the rules be suspended for the purpose of reconsidering it now.

MR. LONG (Walker)—On that I call for the ayes and noes.

The call was not sustained. Upon a viva voce vote being taken a division was called for.

Mr. Samford (Pike) sought recognition.

MR. BROOKS—I rise to a point of order. The vote has not been announced.

MR. BEDDOW—I make the point of order that no quorum voted.



THE PRESIDENT PRO TEM.—Upon casting up the vote there are fifty-nine yeas and nineteen nays, exactly a quorum.

MR. SAMFORD (Pike)—I move——

MR. BEDDOW—I call for a verification of that vote.

MR. SAMFORD (Pike)—I have the floor, and I move to reconsider the vote, and then I move to table the motion for a reconsideration.

MR. WILSON (Washington)—I rise to a point of order. The rules require a two-thirds vote of the members present to suspend the rules. The roll call on the last vote showed about one hundred and thirty members present.

To this there were loud expressions of dissent.

THE PRESIDENT PRO TEM.—The question recurs upon a motion of the gentleman from Pike to reconsider the vote whereby Section 28 was adopted, and the motion to table the motion to reconsider.

MR. BEDDOW—I make the point of order that he can't make two motions at one time.

MR. REESE—I move to table the motion of the gentleman from Pike to reconsider the vote by which the section was adopted.

MR. OATES—The parliamentary rule of procedure is that a member can move to reconsider, and at the same time move to table that motion. It is a means of settling the question so that it cannot be brought up thereafter, and it is taken on one vote.

THE PRESIDENT PRO TEM.—The question recurs upon the motion of the gentleman from Pike to reconsider the vote by which Section 28 was adopted, and the gentleman from Dallas moves to lay that motion upon the table.

MR. GREER (Calhoun)—Upon that I call for the ayes and noes.

The call was not sustained, and upon a viva voce vote the motion to table was carried.

Section 29 was read as follows:

Sec. 29. All bills for raising revenue shall originate in the House of Representatives; but the Governor, Auditor, Treasurer and Attorney General shall, before each regular session of the Legislature, prepare a general revenue bill to be submitted to the Legislature for its action, and the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill so prepared which the Governor shall transmit to the House of Representatives as soon as organized. The Senate may propose

amendments to revenue bills. No appropriation or revenue bill shall be passed during the last five days of the session.

MR. OATES—My recollection is that "the treasurer should not have been included in this section, and I therefore ask unanimous leave to amend by striking out the word "Treasurer" and leave it reading "The Governor, Auditor and Attorney General."

There being no objection the amendment was allowed.

MR. VAUGHAN—I have a substitute for the section.

The substitute was read as follows: All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

MR. VAUGHAN—Section 29 as reported by the committee, it seems to me, puts it in the power or in the hands of the Governor, Auditor and the several other officials to draft the revenue law, to which the Senate may propose amendments, but taking from the House the power to originate the bill, or proposing amendments thereto. The substitute I have offered is simply the section of the old Constitution on the subject, and I hope it will be adopted.

MR. BROOKS—I was going to offer an amendment in line with what the gentleman has already proposed, and desire to say in that connection that the difference between the present Constitution and the one proposed by the committee is found in the words just after the word "representative" in the first line, "all bills for raising revenue shall originate in the House of Representatives." So much is in the present Constitution, and it goes on to say, "The Governor, Auditor and Attorney General shall, before each regular session of the Legislature, prepare a general revenue bill to be submitted to the Legislature for its action, and the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill so prepared, which the Governor shall transmit to the House of Representatives as soon as organized." That is the new part. Now, sir, I submit that we have already enlarged the power of the Executive of this State sufficiently by constitutional amendments so far. I am one of those who believe that we ought to keep the three co-ordinate branches of government—legislative, judicial and executive—as separate and distinct as possible. Now, this proposed amendment creates a sort of imperium imperio. It creates a third legislative house, the members of which will be influenced by a desire to carry through their pet measure on the subject of revenue, whatever it may be. I submit that Representatives in the General Assembly are able enough and have sufficient knowledge of the wants of the State to be able to formulate a revenue bill, without the assistance of this new board. As a matter of course, the Executive is expected, and at every session does send in his message containing

his suggestions as to matters of revenue, but it remains for the Representatives of the people to formulate the bill. Those Representatives have before them not only the Auditor's report and the Treasurer's report, but they can go from time and consult with all the executive officers, and they are perfectly able, without any suggestions from this third house, who will be influenced, as I say, by desire to perpetuate or carry through their particular ideas, to formulate such a bill as will be necessary for the wants of their constituents. Therefore, I am opposed to the proposition contained in the section reported by the committee.

The President resumed the chair.

MR. LONG (Walker)—I rise to support the amendment offered by the gentleman from Dallas, or the substitute which leaves it exactly like it is in the old Constitution. I ask the members on this floor to think what they are doing. We have just passed a section here which takes away from the Legislature every right or power on this earth, and says that they shall be governor exclusively and solely by the estimates made by the Governor and Auditor. If the Governor and Auditor of the State of Alabama estimate the revenues of the State for the next two years at only \$10, although there may be a million and a half in the treasury, the Legislature cannot appropriate one dollar of that money.

MR. CHAPMAN—I rise to a point of order.

THE PRESIDENT—The gentleman will state the point of order.

MR. CHAPMAN—The remarks of the gentleman are not germane to the subject before the Convention.

MR. LONG—If the gentleman will listen to me, I will try to enlighten him on the subject.

THE PRESIDENT—It seems to the chair that the gentleman is in order and the chair will overrule the point of order.

MR. LONG—Now Mr. President, I mentioned that fact to show you that we are giving the Governor and Auditor of Alabama more power than the Czar of Russia has. There is not a civilized government on this earth that takes away from the legislative body the right to appropriate money and we are asked in this bill in the very next section here, to provide that all bills for raising revenue shall originate in the House of Representatives, and just listen how it reads: "But the Governor, Auditor and Attorney-General, shall, before the regular session of the Legislature, prepare a general revenue bill to be submitted to the Legislature for its action, and the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill so prepared which the Governor shall transmit to the House of Rep-

representatives as soon as organized. The Senate may propose amendments to revenue bills. One hundred and five Representatives in the House cannot propose an amendment. They sit here like dummies and tools, and fools. I ask this Convention to pause and think what they are doing. You have abused the Legislature ever since we have been in session. Has the time come when the Governor shall be President, shall be chairman of the Ways and Means Committee of the House, and is he to have all the power and to be the only wise man in this State? I am ready now to adopt a section to provide that no Legislature shall ever again meet in the State of Alabama. That it shall be organized and may be called together by the Governor, but it shall have no power on this earth except to call a Constitutional Convention. That is exactly what you do when you adopt this section. Do you propose to say that the people of this State shall not manage their own affairs? We say in one section that the revenues shall be estimated and that the Legislature must take that as their medicine, and here in Section 29, you say that the Governor and Auditor shall prepare the revenue bill, and that the House shall not even have the right to offer a single amendment. What is the use of your Legislature if you have that? Has it come to pass that we are unwilling to trust the people of the State of Alabama? Has our government become so corrupt that the Legislature of Alabama cannot be trusted? Shall we surrender all power to the Governor? If so, let us go to him on our knees, and let the Legislature go to him and say, "Oh, Most Excellent and Mighty Governor, give us the right to appropriate \$10 to the common schools." Go to him and say, "Oh, Most Excellent and Mighty Governor, we, the Representatives of the people of Alabama, beg you, sir, to let us frame a revenue bill." Go to him and say, "Give us the right to regulate the whiskey licenses in the State of Alabama," for you even deny that right in this section. You silence the voice of the Legislature completely. You make them sit here and appropriate money, but you give them no power to raise money, except to pass a revenue bill prepared for them, to which they must not even offer an amendment. It is time that the members on this floor were thinking what they were doing. Have you so far forgotten yourselves, and are your minds so poisoned against the Legislature, that you think they are all rascals and will be rascals for a hundred years to come? I believe that this Convention will lay upon the table the section reported by the committee, and adopt the substitute offered by the gentleman from Dallas, which has been the fundamental law of this State, as a landmark, ever since it has been a State. It is an old land-mark in every State of the Union. There has never been so radical a measure as this proposed in any Constitution of the United States. It says that you cannot even offer an amendment to a revenue bill, but it must be drawn up by the Governor, Attorney General and Auditor before the Legislature meets. What

do you want with a Legislature? Do you need them? You say to them when they come here, that thus far you can go and no farther, and you absolutely put in the hands of three men the exclusive right of raising every dollar of revenue in the State of Alabama.

MR. O'NEAL—I will suggest an amendment and read it to see if it meets with your approval: The Governor, Auditor, Treasurer and Attorney General shall be ex-officio members of the legislature and shall direct and control all legislation.

MR. LONG — Mr. President, I am opposed to that, unless they are elected as members of the legislature by the people. They have no right to be ex-officio members of the legislature. (Laughter.) I now move if no one else wishes to speak on this subject, the previous question on the amendment.

Mr. Chapman sought recognition.

MR. LONG (Walker)—I will withdraw my motion, as I see the distinguished gentleman rise. They all want to defend it, and I want them if they can enlighten the people of Alabama as to the reason why they put a measure so radical as this in the Constitution.

MR. CHAPMAN -- Since the speech of my distinguished friend from Walker, I am afraid that they have bored an oil well up in his county, and they have found combustible oil, and he is imbued with the spirit of combustion. It does seem to me that my good friend is a little off, either on oil or on this section. Now, Mr. President, and gentlemen of the Convention, what does this section provide? I hope that the reading of it will be oil on the troubled waters with my distinguished friend from Walker. It reads:

Sec. 29. All bills for raising revenue shall originate in the House of Representatives; but the Governor, Auditor, Treasurer and Attorney General shall, before each regular session of the legislature, prepare a general revenue bill to be submitted to the legislature for its action, and the Secretary of State shall have printed for the use of the legislature a sufficient number of copies of the bill so prepared which the Governor shall transmit to the House of Representatives as soon as organized. The Senate may propose amendment to revenue bills. No appropriation or revenue bill shall be passed during the last five days of the session.

I believe, Mr. President, that I was the originator of the idea and it was for this reason, every man in this Convention who has ever been in the legislature, or who knows anything about its practices, its habits, and its rules, knows that the most difficult thing is to get a general revenue bill promptly and properly acted upon. The most difficult thing is to get a general revenue bill prepared. I remember distinctly that during the last General Assembly, dur-

ing the fall, a committee was appointed to prepare a general revenue bill, that was done in November, and what was the result of it, a resolution was adopted, authorizing that committee to sit during the recess. That Committee had from in November until in February to prepare a bill.

MR. BULGER—The gentleman appears to be familiar with the origin of the section, and I would like to ask if the section requires the legislature to enact a revenue law recommended by the Governor and Auditor.

MR. CHAPMAN—Not a bit of it.

MR. BROOKS—Do I understand the gentleman from Sumter to say that a resolution was adopted at the last session of the legislature authorizing the Ways and Means Committee to sit during recess?

MR. CHAPMAN—Oh, no; I did not say that.

MR. SANFORD (Montgomery) — I would like to ask the gentleman this question: The first section here says that all bills for the raising of revenue shall originate in the House of Representatives. To originate it must have its origin or beginning, and how can it originate in the Legislative Department if it is prepared in the Executive Department?

MR. CHAPMAN—It is not prepared there. I want to explain to the gentleman exactly how that it. We know that the preparation of a general revenue bill is the most difficult of all bills that are presented in the legislature, it requires more time, more talent, more investigation, and more study than any other bill that is presented to the legislature. Now, I was interrupted, when I was speaking about the last session of the legislature. At the last session of the legislature the general revenue bill was not presented until about ten or fifteen days before the legislature closed, and what was the result of it? It was not considered by a single man in the legislature, except the five members who eventually had to be appointed to determine what we should pass, and we sat here. I among the other mummies—I was among them—we sat here and intrusted to that committee of five, within fifteen days of the close of the session, what we should pass, and they went down into the committee room, or somewhere else, I don't know where, and they brought up a bill of about three hundred sections, involving the State and the people of the State, and we did not know what was in it, and I don't know until this day, because the Acts have not yet come out. I do not know what was in that bill, and yet I voted for it, and all the balance of us did. My good friend over there, and my friends all around us here, voted for it under the same circumstances. Now, this section is simply directory. It is simply advisory, and nothing more. It says that all bills for

raising revenue shall originate in the House of Representatives. Now, I will have my distinguished friend from Montgomery to understand that the duty imposed upon the Governor, the Auditor and Attorney General is not the origination of the bill, but it is doing nothing more than the Governor has done for fifty years, advising the Legislature as to the finances of the State, that is all it does, and all it proposes to do, but we know this—

THE PRESIDENT—The time of the gentleman has expired.

MR. LONG (Walker)—I move that he be allowed to complete his sentence, and not be cut off in the middle of it.

MR. CHAPMAN—If my time is up, Mr. President, all that I can do is to pray to the Lord to give me time in the next world to finish on this. I have not and cannot within ten minutes possibly reach the merits of this Section. It is purely advisory and nothing more.

MR. LOMAX—I submit that the substitute offered by the gentleman from Dallas (Mr. Vaughan) for this Section ought to be adopted. There is no necessity for this. It is a mere matter of suggestion on the part of the Governor and the other State officers, and there is no necessity in the Constitution, because the Governor has it now, and will have it under this Constitution, to make suggestions as to a revenue bill, if he sees fit to do so. It is a dangerous innovation upon the principles of American government. We have it from the English Constitution, and in every American Constitution, and in the Constitution of the United States, that measures for the raising of revenue must originate in the House of Commons, or in the House that comes from the people, which is the House of Representatives under our system of government. Now to say in our Constitution that the Governor, the Auditor, and the Attorney General, or any other officer of the State, shall prepare and present to the Legislature a revenue bill, in my judgment seriously encroaches upon the rights of the people in this direction. It is utterly unrepugnant. The power of suggestion carries with it the power of persuasion, and the power of persuasion carries with it the power of threat, and the Governor might come to the General Assembly, and hold it by the throat and say if you do not pass my revenue law, your bills will either be pigeon-holed or be vetoed in the Executive Office. Are you prepared to put in a Constitution which will last twenty-five or fifty years so dangerous an innovation upon the rights of the people? We have made changes enough already. We have changed the biennial session of the Legislature. We have taken away the right of the people ever two years to change their Representatives, and now you propose to come in and say to this Governor that you put it in his power for four years to say here is the revenue bill that I have prepared, adopt it, or refuse to adopt it at your peril.

We cannot defend these changes and these innovations before the people. They are not expecting them. They were not demanding them, so far as my information goes, and I had something to do with the canvass that preceded the calling of this Convention, and I tell you when you make innovations of so serious a nature, you cannot successfully defend them before the people who are watchful and anxious as to what the work of this Convention will do. The legislative power ought to be a separate and distinct power; there ought not to be put into the hands of the Executive of Alabama anything which encroaches in the slightest degree upon the right of the people's representatives to say what their laws shall be. By this amendment you put the hands of the Executive upon the many strings of government when the English idea and the American idea has always been to keep the hands of the Executive away from them and to put them into the hands of the people.

MR. SOLLIE—Will it not strike down the system of checks and balances which has always been at the foundation of our Government in America?

MR. LOMAX—In my judgment that would be its tendency. It says he may suggest it merely. That is all right. The language sounds innocent enough.

MR. MACDONALD—You say it is undemocratic and unwise to put an obligation upon the Governor to make suggestions to the General Assembly?

MR. LOMAX—No sir, I do not; on the contrary I said that the Governor now had the power to make suggestions.

MR. MACDONALD—Is it not his duty to make them?

MR. LOMAX—Yes, it is his duty and he has the power to make it, but it don't say he has the power to make a revenue bill and to bring it into the House of Representatives and say you must adopt it or you can't get any legislation through.

MR. O'NEAL—He prepares laws for the Legislature.

MR. LOMAX—He prepares them for the Legislature?

MR. CHAPMAN—Does this Section say that?

MR. LOMAX—No, sir, but I say that is the tendency and natural consequence of it, and I appeal to this Convention, not to put such power into the hands of the Executive that will defeat an expression of the will of the people as shown in the representative body of the General Assembly. Keep your departments separate and distinct. Reserve the monuments of liberty, and your people will bless you rather than curse you when you go to your homes. (Applause).



MR. SAMFORD (Pike)—I desire to add a few simple words in advocacy of the substitute for this section, and in aid of the reason so eloquently put by the gentleman from Montgomery. Every one who is at all familiar with the workings of our State government, and when I say our State government, I suppose it applies to every State government in America, that the Governor, as a general rule, has wonderful power and influence over a great number of the members. Now, place in the Constitution of this State a suggestion from the Convention, if you merely call it a suggestion but give the Governor, in connection with other State officers, the authority to draft revenue bills for the purpose of running the government during his administration, and you place in his hands a power that is dangerous in the extreme, and I submit to this Convention that they are drifting away from the land-marks of our forefathers. The people will come together in their General Assembly once in four years, and be met with a budget prepared by the Governor of the State, which budget will be submitted to the General Assembly, and the General Assembly will be required and urged, and forced almost, to submit to the revenue bill as prepared by the Governor, as to what is estimated as necessary for its needs, and I say to the Convention that it is a proposition—think of it as you please—that you can never defend before the people of the State of Alabama. The members in the Lower House of the General Assembly are supposed to be the representatives directly from the people. It is the House, in governments like ours, which should govern the expenditures, because they are the representatives of the people.

MR. ROBINSON—Would not the Governor that frames the revenue bills be out of office when the Legislature is in session?

MR. SAMFORD (Pike)—I don't know whether he will or not, under the Constitution we are framing, for God knows where we are going to, or where we are to quit at the rate we have been going for the past two years.

MR. O'NEAL—In this section, when the Governor and Auditor submit their revenue bill, is not the Legislature bound either to pass it, or to reject it? Is there any authority for the Legislature to amend it? They are bound to take action, and don't that mean that they must adopt or reject it, and that they have not the power of amendment?

MR. SAMFORD (Pike)—Under the provisions of this section, it does occur to me that the revenue bill will absolutely be prepared by this committee appointed by this Constitutional Convention for submission to the General Assembly. They may propose amendments, but the right of amendment is left to a limited extent—

MR. CHAPMAN—Is there anything here in this section to prevent the Legislature from absolutely rejecting the suggestion made by the Governor, and are there men in Alabama more capable of framing a revenue bill than the Governor, Auditor and Attorney General?

MR. SAMFORD (Pike)—I will answer the gentleman: The people of this government from the time of the foundation of this nation up to the present time, have always considered that the Lower House of Representatives was the only place for the origination of a revenue bill. They do not elect the Governor for that purpose; they do not elect the Auditor for that purpose, but for other duties of State, and they have always maintained that the right to levy taxes upon the people should remain in their Representatives in the House, which is supposed to be the closest to the people. I will not draw invidious comparisons between the high offices of the State and the members of the General Assembly, that have been selected by the people. It is not necessary to do so, and in answer to your other question, it seems from this section that they must either receive it as a whole or reject it as a whole, and that is the only option left to them. I respectfully submit to this Convention that we ought not to go in this direction. We ought not to adopt the section reported by the committee, but we should adopt the substitute as proposed by the gentleman from Dallas.

MR. MACDONALD—When the Committee on Legislation adopted this section, they did not anticipate any such bitter opposition as has been developed on the floor of this Convention. They had not the slightest idea they would be met by the tornado from Walker, the earthquake from Montgomery and the cyclone from Pike.

It seems to me if you carefully consider this section, it is entirely free from the objections that have been urged to it here. We have been told with great force and fury that it was an infringement upon the rights of the people and a departure from the theories of our fathers. What do we find in Section 11 of Article V of the section? The Governor shall from time to time give the General Assembly information on the state of government and recommend to their consideration such measures as he may deem expedient at the commencement of each session of the Legislature, etc. Is that any tyranny?

MR. SAMFORD (Pike) — I will ask the gentleman from Montgomery if he finds anything in the section which he has just read which permits the Governor or any other State officer, outside of the General Assembly, to prepare a general revenue bill for the levying of taxes upon the people?

MR. MACDONALD—Of course I do not, and what is the purpose of the question? What is the significance of it? If he

recommend a measure in the General Assembly, and it is made his duty to recommend the measure, how much better it would be to put it in correct and proper form for passage? Gentlemen, is it any tyranny, when the obligation of this duty is put upon the Governor in the Constitution as it now stands, and by the section suggested by the committee, it is put upon the Governor, Auditor and Attorney General, and to do what, Mr. President, to present a measure to the Legislature which they must take as it is offered. Not by any means. It requires the wildest exercise of imagination, and not reason, to say that because the Governor, Auditor and Attorney General shall present to the Legislature in the shape of a bill, knowledge, experience and wisdom they have as to these particular questions. No men are better able to form a conclusion than they are, because it is made their duty to prepare such a measure and to present it to the General Assembly, submitting it to them as any other bill is submitted. They say that the Legislature is bound hand and foot and cannot amend it. Where does the gentleman get that idea that it cannot be amended by the General Assembly? From what phraseology of this section, or from what reasoning applicable to it, do they get that idea? It has to be presented as any other bill. It has to go through the same methods for passage as any other bill, and it is subject to amendment and subject to absolute rejection, just as any other measure that is submitted to them.

MR. SOLLIE—I would like to ask the gentleman if the provision contained in this section is not in substance the origination of a revenue bill, and if there is any State in the American Union or any people among the English speaking nations, in which it is not left to the popular representative body of the people to originate legislative bills.

MR. MACDONALD—No, sir, this is not the origination of a bill and more than a bill which is written in my office and brought up to the Legislature could be said to have originated in any office. The origination of a bill is when it is presented by some member of the House to the House, and then it comes as a bill which has been framed by men whose position peculiarly qualified them to get up and prepare a proper measure.

MR. LONG (Walker)—I understood the gentleman to say that this was not a bill to be framed by the Governor, etc.

MR. MACDONALD—It is a measure to be prepared by them.

MR. LONG (Walker)—It say it is a revenue bill.

MR. MACDONALD—It may be called that, but it does not become a bill until it is introduced in the House.

MR. BOONE—I desire to offer a substitute for the substitute.

The substitute was read as follows :

All bills for the raising of revenue shall originate in the House of Representatives. The Governor, Auditor and Attorney General shall, before the regular session of the Legislature, prepare a General Revenue Bill, to be submitted to the Legislature for its approval, and the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill for its use, which the Governor shall transmit to the House of Representatives as soon as organized, to be delivered to or used as the House may elect. The Senate may propose amendments to the revenue bill. No appropriation or revenue bill shall pass during the last five days of the session.

MR. LOMAX—I rise to a point of order. You cannot offer a substitute for a substitute.

MR. BOONE—I offer it as an amendment to the substitute.

MR. LOMAX—I submit that it is a substitute and not an amendment.

Indefinite leave of absence was granted to Mr. Byars.

The hour of 6 o'clock having arrived, the Convention thereupon adjourned.

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#### CORRECTIONS.

In remarks of Mr. O'Neal on forty-seventh day, note following corrections :

In second column, first page, thirty-second line from bottom of page, read "never" instead of "ever."

In second column, thirtieth line from bottom of page, read "I" instead of "it."

In third column, thirty-eighth line from bottom of page, read "and" between "presented" and "every."

In third column, forty-sixth line from bottom of page, read "will" instead of "would."

In fourth column, eighty-sixth line from bottom of page, read "induce" instead of "drag."

In fourth column, ninety-fifth line from bottom of page, read "cent per cent." instead of "percentum."

In third column, seventh line from top of page, read "other" between "every" and "alternate."

In remarks of Mr. Rogers (Sumter):

MR. ROGERS (Sumter)—The suggestion made comes from a mind that is unable to grasp the first rudiments of the fundamental of government. Suppose I were to say to a doctor, "I don't want you to give my child a bottle of quinine at a single dose." Would he be fool enough to think I was arguing against quinine as a medicine?

They should be lifted above all considerations and be able to pass upon these things like it was said of Job of old, when he sat in the market place, "righteousness clothed him there and justice was a robe and a diadem."

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## FORTY-NINTH DAY

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MONTGOMERY, ALA.,

Friday, July 19, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. C. B. McDaniel as follows:

Almighty God, it is a good thing to give thanks unto Thee, and to sing praises unto Thy name. O, most High, to show forth Thy loving kindness in the morning, and Thy faithfulness every night. We praise Thee for the refreshing showers of rain. We praise Thee that Thou has blessed us in basket and in store. We praise Thee for civil and religious liberty. We praise Thee for the gift of Thy Son, our Savior. We beseech Thee to help Thy servants to do the work which will bear witness to Thee; help them to work while it is day, for the night cometh when no man can work. We pray Thee to bless the homes we represent. We commend one another to Thy tender care. Thou knowest how frail we are. Thou art not only able to keep us from failing, but from falling; Thou art able to present us faultless at last. Pardon our sins. Deliver us from evil. This we ask in the name of Christ, our Savior. Amen.

Upon the call of the roll 110 delegates responded to their names.

Mr. Merrill in the chair.

MR. deGRAFFENREID—I rise to a question of personal privilege. The stenographic report incorrectly reports some remarks that I made on yesterday but I do not want to take up the

time of the House in correcting these remarks now, and I will ask leave to be allowed to write out what I did say and hand it up to the secretary so that the correction may appear in tomorrow's report.

There being no objection leave was granted.

Leaves of absence were granted Mr. Waddell and Mr. Kirkland and Mr. Ledbetter for Saturday. Mr. Porter for Saturday, Monday and Tuesday next.

MR. WATTS—I rise to a question of personal privilege. Several days ago in the discussion of a measure upon the floor of this House I asked the question of one of the speakers whether the Tax Collector of Dallas County had not deposited money of the State in the Commercial Bank of Selma, and having lost it, applied to the Legislature for relief, and the bill was vetoed. I am informed that the information upon which I asked that question was erroneous, and I feel perhaps an injustice might have been done the Tax Collector of Dallas in my question; and therefore I desire to disclaim such intention and to state that I am satisfied that the information upon which I asked it was erroneous.

The Committee on Journal reported that they had examined the journal for the forty-eighth day of the Convention and found the same to be correct. And upon motion the report of the Committee on Journal was adopted.

MR. COLEMAN (Greene)—I believe this is the proper time to bring up a motion for the reconsideration of a section that was adopted late yesterday, and so I would like to proceed with it.

THE PRESIDENT PRO TEM—The gentleman will suspend until after the roll call. The proper time for that question to come up is immediately after the roll call. The Chair is in error and the gentleman will proceed.

MR. COLEMAN (Greene)—If the delegates will look at the sixth column of the stenographic report they will see the section as it was adopted yesterday afternoon here about midway it reads as follows: "During any regular session of the Legislature the appropriations for each four years before the next meeting of the Legislature shall not exceed in amount the income from the revenues of the State for each of said years respectively, as estimated by the Governor and Auditor." I hesitated to vote because it was my opinion that the proper construction to be placed upon that section excluded the authority of the Legislature to appropriate any surplus that might be found in the treasury. After a more careful examination my conclusion was correct. Read it for yourselves and you will see that the Legislatures has no authority to make any appropriations at all at any time other than those estimated by the Governor and Auditor. Now if the revenues should

exceed that estimate year by year for the four years, when a new Legislature might be convened, and for all time, it has no authority to make any appropriation of any surplus that might accumulate. I gave notice that I would move for a reconsideration for the purpose of enabling the Legislature to appropriate any money that might be accumulated and in accordance with that motion have prepared an amendment to meet the views of certain gentlemen in regard to the Capitol. It reads in this way: "To amend Section 27 by adding to this section the following: 'Any surplus that may be in the State Treasury provided if from any cause it becomes necessary to rebuild the Capitol of the State, the Legislature is authorized to make such appropriations as may be required.'"

I do not anticipate that any such emergency will arise, and according to my opinion there will be plenty of money in the treasury for such purpose; but to meet the remotest contingency that might happen, that amendment has been added to the one I propose to make. I therefore move that Section 27, as adopted, be reconsidered that I may offer this amendment.

MR. OATES—I cannot share in the apprehensions of the delegate just addressed to the Convention. His apprehension seems to be in the first place that the Legislature cannot appropriate beyond the estimate made by the Governor and the Auditor, as for the future incomes, the estimates made by those officers fixes a point beyond which the aggregate appropriations cannot go. Now his other apprehension is that if a surplus accumulates in the Treasury that under this provision there will be no power to appropriate it. Why, sir, the delegate only misconceives the limitations fixed by this section. It is to prevent the Legislature from appropriating in excess of the income; and if there be an accumulated surplus it will be because the income is greater than the appropriations.

MR. WALKER—Will the gentleman permit an interruption?

MR. OATES—Certainly.

MR. WALKER—Suppose that surplus is received from revenues of a year preceding the current year, how can you appropriate it?

MR. OATES—That don't make a bit of difference. There is nothing in this section that prevents such action upon the part of the Legislature. It is to keep them from going beyond the income of each year. There is nothing in it that prevents them from appropriating any amount of surplus that may have accumulated. The gentleman cannot point out a word in the section that has such an operation or effect as that.

MR. WALKER—The language is: “appropriations made shall not exceed in amount the income from the revenues for the current fiscal year.”

MR. OATES—The aggregate appropriations shall not exceed; but suppose the accumulated income does not exceed the amount of appropriations there is no surplus; but in the event the income does exceed the amount of the appropriations, is there anything in there to prevent the Legislature from appropriating it?

MR. WALKER—I think so.

MR. OATES—Nothing at all; it only prevents them from appropriating in excess of the income.

(Mr. Robinson here propounded a question to Mr. Oates which the stenographer was unable to hear.)

MR. WALKER—Suppose that there was a fund in the treasury arising by a sinking fund arrangement on the issue of bonds, how could that fund be appropriated under this provision? It would be in excess of the revenues of the current year.

MR. OATES—Isn't that assuming that it would be in excess. It is only to prevent the Legislature from appropriating more money than the income or the estimated income. Now if the income exceeds the amount of the regular appropriations, there is nothing in the world in it that prevents the Legislature from appropriating that excess, just so they do not go beyond the amount of the income.

MR. WALKER—That would be going beyond the amount of the income.

MR. DENT—I have been absent unfortunately and I would like to get some information. As I understand it this section limits the amount to be appropriated by the Legislature to the income from the revenues of the State. Do I understand in this section that we have adopted, anything beyond the revenues arising from taxation for that particular year could be appropriated by the Legislature? That is the question that is in my mind and I would be glad if the distinguished Chairman of the Committee would make that plain to me. I don't see how we could appropriate anything beyond the income from the revenues as estimated.

MR. OATES—It seems to me that is clear. It is a limitation on the power of the Legislature not to make appropriations beyond the estimated income for each year; but if the income exceeds the amount of the ordinary appropriations and expenses—suppose it does, you cannot have a surplus in the treasury unless it does exceed the amount of expenditures appropriated; but sir, the limitation does not attempt, nor is there any language in it which goes



to the extent of preventing the Legislature from appropriating where there is a surplus accumulated by a greater income than the amount of expenditures. The limitation is to keep the Legislature from making appropriations beyond and above the income. You won't have any surplus at all unless the income is more than the outgo; and if it is more there is no limitation upon it. If it is more where is any language that prevents the Legislature from appropriating it and using it, just so they do not exceed the amount of the income. That is the limitation that this section puts upon it.

MR. HOOD—If they appropriated an amount that exceeded the estimated income, would the appropriation be void?

MR. OATES—Now you have propounded to me a question for the court to decide. That would present a question of entirely a judicial character and I cannot say whether it would be void or not.

MR. HOOD—Wouldn't it be discretionary with the Legislature—wouldn't it be left to the discretion of the Legislature.

MR. OATES—That presents, as I say a judicial question. Now if the appropriations were to exceed, actually exceed the estimate of the income?

MR. HOOD—Yes sir.

MR. OATES—Then suppose the income exceeded the estimate? Is there any limitation or restriction upon the Legislature in appropriating that? So they do not go beyond the income—

MR. HOOD—It reads "the aggregate appropriations made shall not exceed in amount the income from the revenues of the State for the current fiscal year."

MR. OATES—That is not the section now, a substitute was adopted.

MR. O'NEAL (Lauderdale)—What was the substitute?

MR. OATES—To be estimated for each year.

(Mr. Knox here resumed the chair.)

MR. SAMFORD (Pike) — I will ask the gentleman from Montgomery if the Legislature is to be governed by the estimate made by these officers with reference to the revenues to be derived from taxation and other sources, if that would not place the appropriations by the Legislature absolutely in the hands of the party who makes the estimate?

MR. OATES—Not at all. It seems that certain delegates, I don't mean the delegate from Pike, but there seems to be such a wide apprehension in the minds of a good many of the delegates.

They seem to think that the Governor and the other officer charged with the duty, are not to be trusted, are unworthy of being trusted. We have had no such experience as that in this State—no such trouble as that. The Legislatures, however, at times do get too wild in their appropriations and go beyond the probable income. Every one knows, or ought to know, that the Governor—take for instance my friend, the delegate from Pike and put him in the Governor's chair, would he estimate faithlessly, or would he not estimate according to the best information that would not go beyond the probable income? Any gentleman in that high position will do that and no more. It is not putting the power of appropriation altogether into the hands of the Governor and the Auditor. It is putting a limitation upon the powers of the Legislature in this regard. Of course, it is largely directory. I presume, while the question presented by the delegate from Etowah is a judicial one, in a case of the kind that he mentions, whether the appropriations would be void or not, it might be held by the Court, and probably would be held, that this section was directory, and if an honest mistake was made the appropriation would probably be sustained. I think it would. I don't see any necessity for such an apprehension of danger as the delegates see in this section. It seems to me to be a clear case. From what source can we apprehend any danger? It is certainly no limitation upon the Legislature from appropriating a surplus. It just holds that body down or those bodies down, so that they cannot make appropriations in the aggregate which would exceed the estimated income. That is the only purpose of it.

MR. JONES (Montgomery)—Does the gentleman know of any case in which the courts have ever held that a provision in the Constitution is directory, when it says the Legislature shall not do a specific thing? Don't they always declare any action in violation of such a provision void?

MR. OATES—It depends upon the phraseology of it.

MR. JONES—Isn't it mandatory when it says you shall not do a thing, when the Legislature shall not do a certain thing?

MR. OATES—Yes, when you see that language.

MR. JONES—That you shall not exceed in amount the income from the revenues of the State.

MR. OATES—That means a limitation—suppose they were to exceed in appropriations the income, in the aggregate, \$50, would the court hold that the bill would be void—that the appropriation bill is void for that reason? Wouldn't they hold that it was directory?

MR. JONES—That might come under the maxim of *de minimis non curat lex*—the law does not concern itself with trifles.

If there were any grave discrepancy, I think they would hold it void beyond any question.

MR. OATES—This question need not arouse our apprehensions.

MR. JONES—I don't want to interrupt the delegate with my questions, but I simply rise for information: It says that our Legislature shall not exceed in amount the income from the revenues of the State for each of said years respectively, that is four years. But suppose when you started out you had a surplus in the Treasury derived say from the year 1901, could the Legislature for the next four years appropriate the whole amount in the Treasury on the ground that the amount that they started with in 1901 was a part of the revenues of the four years next succeeding.

MR. OATES—The only construction, the only reasonable one, that can be placed upon it is a limitation or restriction that they shall not make their appropriations in the aggregate to exceed the amount—the estimated amount of the income. It has nothing to do with the surplus; and if there shall be more money than the income—suppose the income would be greater, half as great again, 50 per cent. greater than the amount of the expenses or ordinary appropriations, why there is no reason why the Legislature could not dispose of that. It only prevents them from appropriating in excess of that amount. There is no other restriction upon it at all.

MR. PILLANS—I think if the distinguished chairman will read the clause there as reported, or as adopted, he will find there is reason to fear, not only to fear, but to see that the only interpretation which could be given this clause is that it stands as we have adopted it, that not one dollar could be appropriated exceeding the estimate of the income for the succeeding four years. Now let us take figures. Let us suppose that the income annually of the State of Alabama was \$2,500,000, estimated by these said officers. Then for the four years \$10,000,000 would represent the full amount that could be appropriated. Suppose it is declared in the terms of the section that \$10,000,000 would represent the full amount that could be appropriated and let us suppose that the State's revenues during that four years were \$150,000 or \$100,000, we will say, more each year than had been anticipated. At the end of the four years you would have beyond any question \$400,000 of surplus earned by thrift which had been the result of this clause, and the action of this clause, by which the State of Alabama would have a sinking fund, or whatever you might choose to call it, should have wealth or money salted down to the amount of \$400,000.

MR. OATES—Would that be interfering with the provision that it should not appropriate in excess of the income? If there

were an excess in the income over the appropriations made, why couldn't they appropriate it?

MR. PILLANS—I was coming to that. My distinguished friend, the Chairman of the Committee, contends that you could appropriate that but what I am addressing myself to is that the clause as written, prevents doing that, and I will ask your attention to it. Now I have stated a case where the officers have been moderate in their estimate, and have put an estimate of 2,500,000 as the probable amount of income to be subject to appropriation, and in four years that would be ten million dollars, and if they receive during the four years from taxation and the other sources of revenue four hundred thousand in excess of the ten million dollars, you have got that as I express it, salted down, just as every thrifty man has an income and a surplus. Every man that saves ten dollars a year, has got his income, and has the surplus which he has saved when he balances his books, be he a merchant or professional man. That becomes his surplus or a part of his wealth and is no longer income. There comes another session of the legislature which is to make appropriations for another four years, and the members of this board, who are to furnish the figures to the legislature declare that their estimate is that the amount which can be safely estimated as the revenue of the State for that four years is two million six hundred thousand dollars per annum, and that gives the right to the legislature to go the extent of \$10,400,000 for that four years, and not one dime or penny beyond it. Because you cannot say that the \$400,000 surplus from the last four years is within the terms of the estimate of income for another four years. Any one can see that you cannot claim that it is income, any more than you can claim a man who had a surplus last year is going to make a surplus next year in the prosecution of any particular business. Now you have got \$400,000 to the good, and your officers come in and they are bound to act conscientiously and they cannot untruthfully certify to the legislature that the income will be what they expect to come in, in addition to what has already been saved. If they are truthful, honorable men, such as are usually elected to office in Alabama they will not do that, but they will say that the taxes are so much, the licenses are so much, and other sources of revenue are so much, which makes us believe that the income for the next four years will be so many dollars. Now that does not touch the surplus at all. It does not relate to surplus does it? No more than any man would consider his surplus as a part of his income for the ensuing year. If it is stated to you fairly and honestly as these gentlemen will do, no man who makes an estimate of his income for next year is going to, for instance, to give it into the tax gatherer, the amount which would include his savings for the preceding year, or the preceding twenty years of the laborious life. Now if you can add the surplus accumulated for the four preceding years you could add the

surplus for the preceding fifty years and claim that that is the estimated income which you will receive from your different sources of revenue for the next four years. I take it it will not do to put language into the Constitution such as this, if we desire to give the legislature the power to appropriate that surplus, and we intend to give that power, and for that reason I remarked to the distinguished gentleman from Jefferson on yesterday that while I voted as he did for the passage of the resolution I also voted for it to be reconsidered, in order to have it so drawn as to make it beyond doubt so that the State would not go on accumulating money out of the tax-payers and keeping it in the treasury where it could not be used for any purpose whatever.

MR. O'NEAL—Suppose that the income is less than the estimate made by the Governor, say by \$400,000, what would be the condition of the State?

MR. PILLANS—It would be beyond question just as before.

MR. O'NEAL—The legislature cannot meet to correct the evil under the present law, and what would be the remedy?

MR. PILLANS—As a matter of course that is the old case of a man making ten dollars and spending eleven. If there are excessive appropriations notwithstanding all the pains we take to prevent it, and these appropriations are in excess of the revenue, the State is simply in the position it has occupied before, of having to borrow money to carry on the government, and if the State should be getting too greatly in debt. I assume the Governor of the State would call the legislature in special session and take measures to provide against the deficit growing too large.

But that does not affect the question under consideration. The question under consideration is how are we going to give the legislature the power to spend the money that they raise, if they should raise it in excess of the amount that is appropriated upon the estimate of the Governor.

MR. PETTUS—The object with which the gentleman from Greene moves a reconsideration of this question is somewhat in line with the idea I had when I proposed a substitute to the amendment offered by the gentleman from Wilcox on yesterday. I offered that substitute to authorize the legislature to dispose of the revenues that would accrue as estimated, before the next General Assembly met, and would not limit them absolutely, as the present section does to the income and revenues for the year in which the appropriations were made. But I think even that would have been one of the most dangerous sections that could have been adopted by this Convention. The legislature is a public assembly, the lower House is the body in which all measures and bills for the raising of revenue should originate and it is a body which should have the untrammelled power to disburse the revenue of the State

as they see fit and I think the undivided responsibility for their action should rest upon the legislature and should not be upon the Governor except in so far as he may abuse his power, or may fail to use his power to veto measures which, in his opinion, are bad. The Governor is the executive arm of the State government, and I do not think that he should have the right himself, or in conjunction with the Auditor, to place an absolute inhibition upon the power of the people in the popular branch of the government, the General Assembly. I do not think it is either right or wise, or expedient to so concentrate the power of the State government in the hands of any one man. It might be thought that at some time there should be a man in the Executive office of the State, whose interest it would be to under-estimate the revenues of the State for the next four years, and I submit that if that be true, and the revenues are under-estimated the succeeding legislature will not only be prohibited from appropriating what might accrue, but the General Assembly would be prohibited from appropriating for any purpose the surplus that would accrue for four years, except for the year in which it accrues. Then there is another danger which it seems to me should be taken into consideration. The presumption is that the organic law which we are now framing is to be the Constitution for the State of Alabama for the next twenty or thirty or forty years, and in the course of that time different political parties might arise in the State of Alabama, and it may be possible that in the future we shall be confronted with the condition of having a Governor of one political party and a General Assembly of another political party, and I submit that if such a condition should arise that the Governor of the State would have in his hand a dangerous power, that it would be within his power, under political conditions like that, to prevent the Legislature, and to prohibit the Legislature, from taking such action as in its wisdom it might deem best. Mr. President, I favor the reconsideration of this section for the purpose either of striking out the part which authorizes the Governor and Auditor to make the estimate, and leave it to the General Assembly as a purely legislative function to estimate the income, and to limit their appropriation to the estimates they themselves may make, or of laying this section altogether upon the table, and I move the previous question upon the motion to reconsider.

Upon a vote being taken, the main question was ordered.

MR. COLEMAN (Greene)—The last delegate who addressed you has gone over the question that was so fully discussed on yesterday and settled by this Convention not to trammel the Legislature in the appropriation of revenues, but to restrict them within the limits of the revenue. That was indicated very clearly by the vote on yesterday, and I think that is a very sound provision. The trouble of my friend, the distinguished chairman of the com-

mittee, proceeds, I think, from the fact that he has got one idea in his mind, and there is another in the law. I have called the attention of delegates to the reading of the law, and I venture to assert there are not three lawyers in this Convention who will agree with him upon the legal construction of this section. He confounds income with estimated income. If anything can be clear it is that the Legislature cannot make appropriations exceeding the estimated income. That is the basis of the argument of the delegate from Mobile, which has not been answered legally, and cannot be answered. When you adopt this section as amended the Legislature will have authority not only to appropriate the revenues as they arise, respectively each year, but any surplus that may accumulate in the treasury, and the purpose of the section is to prevent the Legislature from making appropriations beyond the revenues of the State, and any money that may be accumulated in the treasury. That is all I have to say. The previous question has been ordered.

THE PRESIDENT—The question is upon the motion to reconsider the vote whereby this Convention adopted Section 27.

Upon a vote being taken, the motion to reconsider was carried.

MR. COLEMAN (Greene)—I offer an amendment.

The amendment was read as follows: "Amend Section 27 by adding to the section the following, 'And any surplus that may be in the State treasury; provided, that if from any cause it becomes necessary to rebuild the Capitol of the State the Legislature is authorized to make such appropriation as is required.'"

MR. COBB—I move to amend that by striking out the whole section and the amendment.

MR. COLEMAN—Can that be done after the previous question has been ordered?

THE PRESIDENT—The previous question was ordered on the reconsideration.

MR. SAMFORD (Pike)—I move to lay the whole business on the table, the section and the amendment.

MR. WILLIAMS (Marengo)—A point of order. That was voted down on yesterday on the motion of the gentleman from Barbour, Mr. Merrill.

MR. O'NEAL—Yes, but it is reconsidered, Mr. President. We are not bound by what we did yesterday after a reconsideration.

MR. COLEMAN (Greene)—The question before the House now is upon the amendment.

MR. COBB—I have offered a substitute.

Substitute was read: "To amend by striking out the section and the amendment."

MR. WALKER—Is there anything before the House now, the question of reconsideration having been passed upon? Is the consideration of this question properly before the House at this time?

THE PRESIDENT—It seems to the chair that after the Convention reconsiders the section that it then takes its place to be reconsidered when the report of the committee is regularly reached, and the point of order will be sustained.

MR. OATES—I do not see the objection to considering it now, inasmuch as it is reconsidered, I think we should take it up and consider it.

THE PRESIDENT—It would require a suspension of the rules to do so. The regular order is the call of the roll of delegates for the introduction of ordinances etc.

MR. HOWZE—I offer a petition, and ask unanimous consent that it be read.

Objection was made.

MR. HOWZE—I move a suspension of the rules, and that the petition be read.

Upon a vote being taken, a division was called for, and the motion to suspend the rules was carried.

The petition was thereupon read as follows:

Petition 23, by Mr. Howze:

To the Honorable the Constitutional Convention of Alabama:

In a Section of the proposed new Constitution of Alabama, adopted by you last week, fixing a debt limit upon cities, there is an exception as to cities over six thousand (6,000) population of "obligations incurred and bonds issued for street or sidewalk improvements where the cost of the same in whole or in part is to be assessed against the property abutting said improvements."

While the city of Birmingham is progressive and growing, it has a very large bonded debt at a high rate of interest, and unless there is a debt limit fixed in the Constitution for this city, there is no chance to advantageously fund the city's bonded debt.

To allow the city to further issue bonds to purchase water works, light plants, etc., is dangerous enough, but in the exercise of this power, the city will at least get some property for the indebtedness incurred, and there is some limit in this regard by supplying the needs of the city.



But the exception from the debt limit above set forth, is dangerous, ruinous; this exception virtually nullifies the debt limit fixed.

Suppose Birmingham goes on and issues two or three million dollars of improvement bonds, as it is likely to do if not restrained, and then those bonds should become a charge upon the general revenues of the city, by reason of the courts holding that the assessments against abutting property are invalid, on account of the law authorizing the improvements being invalid or the failure of the city authorities to comply with the requirements of the law (such things have happened) what would be the financial condition of the city?

The bonds would be paid, if paid at all, out of the general revenues of the city, which are now strained to the utmost limit.

The financial condition of Birmingham is such that the real property-holders recognize the fact that all improvements hereafter made will have to be made at the expense of the property, it cannot be made at the expense of the general fund of the city.

In all improvement laws, an opportunity is given each property holder to pay cash for the cost of the improvement assessed against his property. This being true, if the improvements are to be made at the expense of the abutting property, is it fair or right for a property holder who has paid the assessment against his property, to be required to guarantee the payment of the assessment against other property where improvement bonds are issued by the city?

If the city issues improvement bonds, the city of course becomes primarily liable for the debt, and if it fails for any cause to collect the assessments, the debt becomes a charge upon the general revenues of the city, and necessarily a charge by way of taxation upon all the property in the city.

It may be said that the city can borrow money cheaper than an individual—this is a delusion—our experience in the past has been that where provisions for ten year improvement bonds were made, the property holder is required to pay in annual installments, or in the average term of five years—you have but to examine the last Charter of the City of Birmingham to see that the property-holder could borrow money to pay for the improvements and encumber his own property therefor, and not pay more than he would have to pay to the city.

If the cost of the improvements is to be paid for in whole or in part by the abutting property, each property-holder should be required to pay cash, if the money has to be borrowed, let the property holder borrow it and encumber his property—let the city have the power to order the improvements, let the contract, make and

collect the assessments and sell the property if not paid. In this way, when the property holder pays his assessment he is done with it, his property is not liable directly or indirectly for the payment of the assessment against property which does not belong to him.

To allow the city to issue bonds for improvements, where the cost is to be assessed against the abutting property, makes the city guarantee the validity of the law under which the improvements are made and guarantee that the city officials have conformed to the requirements of the law.

In the past, experience shows that city authorities (not only in Birmingham but elsewhere) are prone to be profligate in the expenditure of money, when pay day is in the distant future, and the experience of property holders constrains them to say that there should be a restraining power upon the city authorities.

The property holders are more interested than any others in improving the city and in maintaining the credit of the city.

And we respectfully ask you to protect the property holders in Birmingham by striking out the exception above set forth, which authorizes the city to issue bonds for improvements where the cost is to be assessed in whole or in part against the abutting property.

In making this request, we feel satisfied that we voice the sentiments of the great majority of the real property holders in Birmingham, any statement to the contrary notwithstanding.

Resolved, By the Birmingham Real Estate Association, in meeting assembled, That the above and foregoing address and petition be adopted and the same be forwarded by the Secretary to the members of the Constitutional Convention from Jefferson County, and that said delegates be requested to present the same to the Convention.

T. H. Molton,

July 9, 1901.

President.

HR. HOWZE—I ask that it be referred to the Committee on Municipal Corporations. So referred.

MR. HOOD—I yield my call to the gentleman from Greene.

MR. COLEMAN—In line with the petition just presented I desire to offer the petition there purporting to represent a million and a half of property of the taxpayers of Birmingham. I do not care to have the names read, but would like for them to appear so that the delegates from that county may see who are interested in this matter, for they know more about them than I do. Read the caption, then the names can appear in the stenographic report.

Upon a vote being taken the motion to read the petition was carried, and the Secretary read the petition as follows:

## Petition 24 Mr. Coleman (Greene).

Hon. T. W. Coleman, Montgomery, Ala.:

The undersigned citizens and tax payers of the city of Birmingham, Ala., earnestly desire a tax limit on the power of taxation by municipalities and especially of this city, and desire the amendment proposed by Mr. Weakley with its exceptions rejected, and we respectfully pray that the Convention now in session place a limit on the powers of taxation and of assessment for investment on municipal authorities:

John G. Smith, H. P. Smith, J. H. Stillman, L. R. Edge, A. Speaker, D. R. Dunlap, L. Burger, T. C. McDonald, William Snyder, W. O. Snyder, S. West Jones, W. A. Smith, N. P. Leavins, F. E. Davison, W. T. Robinson, A. W. Abbott, Otto Marx, Frederick G. Mack, W. S. Brown, J. A. Downley, George H. Blin, Jr., M. W. Bliner, W. E. Holloway, Norman Webb, James Spence, Calvin Jones, R. H. Baugh, C. A. Mountjoy.

The same petition as above, but with the following statement: "These parties own property worth approximately one million dollars" was signed by the following names: T. H. Molton & Co., for Joseph R. Smith, Sr.; E. L. Watts, John C. Henley, B. F. Simmons, C. E. Crenshaw, E. J. Pierce, Kate D. Pierce, L. L. Molton, N. H. Anderson, M. J. Ansley, William Fort, Mary D. Fitzpatrick, R. B. Haney, J. H. La Prade, M. Lewars, M. J. Lunquest, Betty Montgomery, C. H. Molton, F. Nelson, Jr., J. A. Robertson, M. C. Roper, E. W. Storey, J. E. Torrey, C. B. Thompson, H. H. Vance, M. H. Ware, D. Walker, B. F. Roden, O'Bryne & Franklin, H. Franklin, T. T. Ashford, George Cobb, John F. White, S. W. White, J. H. Patterson, W. H. Wilder, Mrs. W. H. Wilder, Thomas D. Bradford, H. H. Mayberry, T. H. Spencer, H. S. Hall, S. E. Thompson, C. F. Enslen, Jefferson County Savings Bank by C. F. Ensley, President; J. Ellis Davis, Mrs. Lydia L. Davis by J. E. Davis, agent.

The same petition was signed by the following names, but without any statement attached thereto: W. R. Houghton, George Huddleston, William C. Ward, J. L. Yancey, J. D. Chichester, L. Schneinbrathen, P. M.; M. T. Porter, J. M. Gillespy, John W. Webb, Wilbur C. Offott, Mrs. Idella M. Middleton, S. B. Garrett, Louis Saks, J. F. Sulzby, Hermann Saks, J. P. Lynch, M. E. Watlington, F. M. Lynch, J. D. Callius, Sam H. Harris, J. M. Yahill, J. W. Hasz, Sam L. Earle, M. M. Boggan, J. C. Abernethy, H. C. Abbott, E. I. Burn, L. E. Bates, John P. Rosenthal, W. F. Hodges, J. N. Beason, W. D. Cooper, A. B. Vandergrift, R. R. Robinson, Jones Schwab, R. N. Wheeler, F. B. Johnson, Sidney Hart, B. Meyerstein, Joseph Lovemday, S. Rich, James A. Going, R. V. Mobley, R. A. McAdory.

The same petition was sign by the following names, but without any statement attached thereto:

I. H. Benners, Wesley M. Smith, H. V. Johnson, T. F. Cheek, James A. Allen, R. E. Middleton, J. E. Wilson, T. N. Anglin, M. M. Williams, Oliver Caldwell, G. W. Chambers, M. A. May, John B. Bonner, J. B. Francis, T. C. William S. Morrow, J. P. Stiles, John L. Davis, H. M. Geever, H. W. Crook, city of Bessemer; M. H. Crittenden, C. C. Ellis, C. C. Ellis, Jr., Lewis Whaley, C. R. Sexton, Mrs. F. M. Gardner, Mrs. K. B. Beard, Mrs. Jane T. Lynch, J. C. Kyle, Mrs. L. A. Peace, H. E. Hewitt, M. H. Snedecor, A. F. White, E. J. Black, Warner, Smiley & Co., by Newton, Mrs. Annie Brooks, A. B. Lovelace, Joe Slaughter, J. M. Bradley, J. L. Worcester, L. J. Haley, Jr.

MR. PRESIDENT—The petition will be referred to the Committee on Municipal Corporations.

The hour of 10:30 having arrived the call of the roll of delegates was discontinued. Upon a call of the standing committees the following business was transacted:

MR. O'NEAL — The Committee on Local Legislation has been called and the Committee on Engrossment reported yesterday the engrossed article. I would ask that the article be read a third time for final passage. Is it in order at this time?

THE PRESIDENT—It seems to the Chair that would come under unfinished business. Whether it did or not, without a suspension of the rules it could not be done.

MR. O'NEAL—It is the report from the Committee on Engrossed Bills. Their report is in order. That would come up under the head of special committees.

MR. O'NEAL—It is the report of a standing committee. I call your attention to the report of the standing committees. Is not the Committee on Engrossed Bills a standing committee?

THE PRESIDENT—It is a special committee, and when that committee is called it will merely be called for reports. That would come under No. 9, unfinished business.

MR. deGRAFFENREID—Mr. President, I want to state that the Committee on Order and Harmony have gotten down to business and that it will be perhaps in the interest of shortening the work of the Convention, if each article was read and put upon its passage.

THE PRESIDENT — The regular order could be reached while you gentlemen are talking.

The head of unfinished business being called—

MR. O'NEAL—I ask that the report of the Committee on Engrossment be now taken up and that the articles engrossed by them be put upon final passage.

THE PRESIDENT — It is moved that the article on local legislation reported by the Committee on Engrossment be read a third time and passed.

MR. BROWNE—I move to amend that motion by taking up for passage the articles as reported by the committee, if the gentleman will accept, there were three articles reported at the same time.

THE PRESIDENT—It is moved that the articles reported by the Committee on Engrossment be taken up and read a third time and passed.

Upon a vote being taken, the motion was carried.

The ordinance on local legislation was first in order.

MR. WILSON (Clarke) — I desire to explain why I vote against this ordinance. I would wait until my name is called on the roll, but judging from the experience of those who have tried that before objection will be interposed and therefore as I have the right to explain I want to say that my reason for voting against the ordinance, is that one section of it permits the court to strike down a law which the Legislature has passed, which has been acted on, upon which rights have been based on a decision by the courts that the relief which the act gave might be secured from the courts and for that reason I vote against the ordinance, otherwise I am in favor of it.

MR. deGRAFFENREID—Mr. President, I vote against the ordinance for the same reason.

MR. DENT—I would like to inquire if the Convention has not power to strike that part out by some action? Could not they introduce an independent ordinance striking out after its adoption.

THE PRESIDENT—An independent ordinance might be introduced, yes sir.

MR. DENT—I agree with the gentlemen who have expressed that opinion. I propose to introduce a separate ordinance to strike out the objectionable clause.

MR. KIRK—I vote against it for the reasons stated by the gentleman from Clarke.

MR. PETTUS—I shall vote against it for the reason stated by the gentleman from Clarke. I would like to have that stricken out and for the additional reason this Convention has absolutely

cut off certain subjects from local legislation and has refused to provide any other forum to which the people might look for relief. For those reasons, I vote against it.

MR. BURNS—I would like to ask the gentleman a question. I want to ask if he votes against this article this morning, if he will vote against ratification?

MR. PETTUS—Oh no, nothing of the sort.

MR. O'NEAL—I rise to a point of order. Delegates have no right to explain their votes at this time.

THE PRESIDENT—It seems to the Chair it is competent now on the final passage of the bill to discuss the question of the acceptance or the injection of the entire article and gentlemen may state they propose to vote against the entire article, and are explaining their attitude.

MR. O'NEAL—I think it is doing indirectly what the rules prohibit.

MR. LONG (Walker)—I will vote against it because I think it will result in endless litigation, if any law passed by the Legislature can be carried into court and the court is given the absolute right to inquire into it and hold that any law which the judge may think should be done by a general law. I think it will bring about endless litigation and I will vote against the article.

MR. O'NEAL—I would suggest to the gentleman that any amendment desired can be made when the article comes up for final passage from the Committee on Harmony and Consistency. Under our rules that can be done if the Convention desires to do it.

MR. COLEMAN—I would like to make a statement. It is hardly consistent to vote against the adoption of the entire article because there is a section in it that can be remedied. I shall vote aye for the adoption of the article whatever position I may take upon the particular section.

The article was read as follows:

An ordinance concerning local legislation:

Be it ordained by the people of Alabama in Convention assembled, That the following article on local legislation be inserted in the Constitution:

#### ARTICLE —.

#### Local Legislation.

Section. The General Assembly shall not pass a special, private or local law in any of the following cases:

1st—Granting a divorce.

2d—Relieving any minor of the disabilities of non-age.

3d—Changing the name of any corporation, association or individual.

4th—Providing for the adoption or legitimizing of any child.

5th—Incorporating a town, city or village.

6th—Granting a charter to any corporation, association or individual.

7th—Establishing rules of descent for distribution.

8th—Regulating the time within which a civil or criminal action may be begun.

9th—Exempting any individual, private corporation or association from the operation of any general law.

10th—Providing for the sale of the property of any individual or estate.

11th—Changing or locating a county seat.

12th—Providing for a change of venue in any case.

13th—Regulating the rate of interest.

14th—Fixing the punishment of crime.

15th—Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal or extension of existing municipal indebtedness, created prior to the adoption of the Constitution of 1875.

16th—Giving effect to an invalid will, deed or other instrument.

17th—Authorizing any county township, city, town or village to issue bonds or other security, except in cases in which the issuance of said bonds or other securities has been authorized by a vote of the duly qualified electors of such county, township, city, town, or village, at an election held for such purpose in the manner that may be prescribed by law; provided, the General Assembly may pass special laws to refund bonds issued before the date of the ratification of this Constitution.

18th.—Amending, confirming or extending the charter of any private or municipal corporation, or remitting the forfeiture thereof.

19th—Creating, extending or impairing any lien.

20th—Chartering or licensing any ferry, road or bridge.

21st—Increasing the jurisdiction and fees of justices of the peace or the fees of constable.

22d—Establishing separate school districts.

23rd—Establishing separate stock districts.

24th—Creating, increasing or decreasing fees, percentage or allowance of public officers.

25th—Exempting property from taxation or from levy or sale.

26th—Exempting any person from jury, road or other civil duty.

27th—Donating any land owned by or under control of the State to any person or corporation.

28th—Remitting fines, penalties or forfeitures.

29th—Providing for the conduct of elections or designating places of voting, or changing the boundaries of wards, precincts or districts, except on the organization of new counties, and changing the lines of old counties.

30th—Restoring the right to vote to persons convicted of infamous crimes, or crimes involving moral turpitude.

31st—Declaring who shall be liners between counties.

No special, private or local law, except a law fixing the time of holding court, shall be enacted in any case, which is provided for by a general law, or when the relief sought can be given by any court of this State, and the courts, and not the General Assembly shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the General Assembly indirectly enact any such special, private or local law by the partial repeal of a general law.

The General Assembly shall pass general laws for the cases enumerated in this section; provided, that nothing in this section or article shall affect the right of the Legislature to enact local laws regulating or prohibiting the liquor traffic; provided, that the notice is given as required in Section 2 of this article.

Sec. 2.—No special, private or local law shall be passed on any subject not enumerated in Section 1 of this article, except in reference to fixing the time of holding courts, unless notice of the intention to apply therefor shall have been published, without cost to the State, in the county or counties where the matter or thing to be affected may be situated, which notice shall state the substance of the proposed law, and be published at least once a week for four consecutive weeks in some newspaper, or if there is no newspaper



published in the county, by posting the said notices for four consecutive weeks at five different public places in the county or counties, prior to the introduction of the bill; and the evidence that said notice has been given shall be exhibited to each House of the General Assembly, and the fact of said notice spread upon the Journal. The courts shall pronounce void every local law which the Journals do not affirmatively show was passed in accordance with the provisions of this section.

Sec. 3.—The General Assembly may repeal or modify by a special, private or local law, any special, private or local law upon notice being given and shown, as provided in the last preceding section.

Sec. 4.—The operation of no general law shall be suspended for the benefit of any individual, private corporation or association, nor shall any individual private corporation or association be exempted from the operation of any general law, except as in this article otherwise provided.

Sec. 5.—The General Assembly shall pass general laws under which local and private interests shall be provided for and protected.

Sec. 6.—A general law within the meaning of this article is a law which applies to the whole State a local law is a law which applies to any political subdivision or subdivisions of the State less than the whole. A special or private law, within the meaning of this article is one which applies to an individual, association or corporation.

Sec. 7.—No bill introduced as a general law into either House of the General Assembly shall be so amended in its passage as to become a special, private or local law.

Upon the call of the roll the vote resulted as follows:

#### AYES.

Messrs. President,	Cardon,	Ferguson,
Altman,	Chapman,	Fletcher,
Banks,	Cobb,	Glover,
Barefield,	Cofer,	Graham, of Talladega,
Beddow,	Coleman, of Greene,	Grayson,
Bethune,	Cornwall,	Greer, of Calhoun,
Blackwell,	Craig,	Greer, of Perry,
Boone,	Cunningham,	Handley,
Brooks,	Davis, of DeKalb,	Harrison,
Browne,	Davis, of Etowah,	Heflin, of Chambers,
Bulger,	Duke,	Heflin, of Randolph,
Burnett,	Eley,	Hinson,
Burns,	Espy,	Hodges,

Hood,	Moody,	Selheimer,
Howell,	Murphree,	Sloan,
Howze,	NeSmith,	Smith (Mobile),
Inge,	Norman,	Smith, Mac. A.,
Jackson,	Oates,	Smith, Morgan M.,
Jones, of Bibb,	O'Neal (Lauderdale),	Sorrell,
Jones, of Montgomery,	O'Neill (Jefferson),	Spragins,
Jones, of Wilcox,	Opp,	Stewart,
Knight,	O'Rear,	Tayloe,
Kyle,	Palmer,	Vaughan,
Leigh,	Parker (Cullman),	Waddeil,
Locklin,	Pearce,	Walker,
Lomax,	Pillans,	Watts,
Macdonald,	Reese,	Weakley,
McMillan (Baldwin),	Reynolds (Henry),	White,
McMillan (Wilcox),	Robinson,	Whiteside,
Malone,	Rogers (Lowndes),	Williams (Barbour),
Martin,	Sanders,	Williams (Marengo),
Maxwell,	Sanford,	Wilson (Washington),
Miller (Wilcox),	Searcy,	Winn,
Total—99.		

## NOES.

Carmichael, of Colbert,	Henderson,	Pettus,
Dent,	Kirk,	Spears,
deGraffenreid,	Kirkland,	Studdard,
Foster,	Long (Walker),	Wilson (Clarke),
Gilmore,	Merrill,	
Total—14.		

## ABSENT OR NOT VOTING.

Almon,	Grant,	Phillips,
Ashcraft,	Haley,	Pitts,
Bartlett,	Jenkins,	Porter,
Beavers,	Jones, of Hale,	Proctor,
Byars,	King,	Renfro,
Carmichael, of Colbert,	Ledbetter,	Reynolds (Chilton),
Carnathon,	Long (Butler),	Rogers (Sumter),
Case,	Lowe (Jefferson),	Samford,
Coleman, of Walker,	Lowe (Lawrence),	Sentell,
Eyster,	Miller (Marengo),	Sollie,
Fitts,	Morrisette,	Thompson,
Foshee,	Mulkey,	Weatherly,
Freeman,	Norwood,	Willet,
Graham, of Montgomery,	Parker (Elmore),	Williams (Elmore),

Mr. Beddow here took the Chair, and by a vote of 99 ayes and 14 noes the Article was adopted.

THE PRESIDENT PRO TEM--The Article will be ordered printed and referred to the Committee on Order, Consistency and Harmony of the Whole Constitution.

The President here resumed the Chair.

The engrossed Article on State and County Boundaries was read as follows:

An ordinance to create and define the State and County Boundaries and to regulate the location of county sites and the formation of new counties.

Be it ordained by the people of Alabama in Convention assembled, That Article II, of the Constitution be stricken out and the following Article inserted in lieu thereof:

## ARTICLE II.

State and County Boundaries, County Sites and New Counties.

Section 1. The boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the 31st degree of North Latitude crosses the Perdido River; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee, crossing west along the southern boundary line of the State of Tennessee, crossing the Tennessee River and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear Creek, thence by direct line to the northwest corner of Washington County, in this State as originally formed; thence southerly, along the line of the State of Mississippi to the Gulf of Mexico, thence eastwardly to and including all islands within six leagues of the shore to the Perdido River, thence up the said river to the beginning. Provided, that the limits and jurisdiction of this State shall extend to and include any other land and territory now acquired, or hereafter acquired by contract or agreement with other States, or otherwise, although such land and territory are not included within the boundaries hereinbefore designated.

Sec. 2. The boundaries of the several counties of this State as they now exist are hereby ratified and confirmed.

Sec. 3. The General Assembly may by a vote of two-thirds of both Houses thereof arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new counties shall be hereafter formed of less extent than 600 square miles, and no existing county shall be reduced to less than 600 square miles; and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one Representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken without the required number

of inhabitants, entitling such county or counties to separate representation; Provided, that out of the counties of Henry, Dale and Geneva a new county may be formed under the provisions of this Article for forming new counties, so as to leave said counties of Henry, Dale and Geneva with not less than 500 square miles each.

Sec. 4. No county line shall be altered or changed, or in the creation of new counties, shall be established, so as to run within seven miles of the County Court House of an old county.

Sec. 5. No county site shall be removed except by a majority vote of the qualified electors of said county, voting in an election held for such purpose, and when an election has once been held for such purpose, no other election can be held for such purpose until the expiration of four years. Provided, that the county site of Shelby County, of this State, shall be and remain at Columbiana, unless removed by a vote of the people as provided for in an act entitled an Act to provide for the permanent location of the county site of Shelby County, Alabama, by a vote of the qualified electors of said county, approved the 9th day of February, 1899, and the Act amendatory thereto approved the 20th day of February, 1899, or by an election held under the provisions of this Article.

THE PRESIDENT—The question is upon the adoption of the Article.

And upon a call of the roll the vote resulted as follows:

#### AYES.

Messrs. President,	Davis, of DeKalb.	Hodges,
Almon,	Davis, of Etowah,	Hood,
Altman,	Dent,	Howell,
Ashcraft,	deGraffenreid,	Howze,
Banks,	Duke,	Inge,
Barefield,	Eley,	Jackson,
Beddow,	Eyster,	Jenkins,
Bethune,	Espy,	Jones, of Bibb,
Blackwell,	Ferguson,	Jones, of Montgomery,
Boone,	Fletcher,	Jones, of Wilcox,
Brooks,	Graham, of Montgomery,	Kirk,
Browne,	Graham, of Talladega,	Kyle,
Bulger,	Grayson,	Knight,
Burnett,	Greer, of Calhoun,	Leigh,
Burns,	Haley,	Locklin,
Cardon,	Handley,	Lomax,
Chapman,	Harrison,	Long, of Butler,
Cobb,	Heflin, of Chambers,	Long, of Walker,
Coleman, of Greene,	Heflin, of Randolph,	Macdonald,
Craig,	Henderson,	McMillan, of Baldwin,
Cunningham,	Hinson,	McMillan (Wilcox),

Malone,	Pearce,	Stewart,
Martin,	Pillans,	Tayloe,
Maxwell,	Pitts,	Vaughan,
Merrill,	Proctor,	Waddell,
Miller (Wilcox),	Robinson,	Walker,
Moody,	Rogers (Lowndes),	Weakley,
NeSmith,	Sanders,	White,
Norman,	Searcy,	Whiteside,
O'Neal (Lauderdale),	Selheimer,	Williams (Barbour),
O'Neill, of Jefferson,	Sentell,	Williams (Elmore),
Opp,	Smith (Mobile),	Wilson (Clarke),
O'Rear,	Smith, Morgan M.,	Wilson (Wash'gton),
Palmer,	Sorrell,	Winn,
Parker (Cullman),	Spears,	
Parker (Elmore),	Spragins,	

Total—107.

#### NOES.

Cofer,	Mulkey,	Sanford,
Fitts,	Oates,	Sloan,
Foshee,	Porter,	Smith, Mac. A.,
Freeman,	Reynolds, of Henry,	Stoddard,

Total—12.

#### ABSENT OR NOT VOTING.

Bartlett,	Grant,	Phillips,
Beavers,	Greer, of Perry,	Reese,
Byars,	Jones, of Hale,	Renfro,
Carmichael, of Colbert,	King,	Reynolds (Chilton),
Carmichael, of Coffee,	Kirkland,	Rogers (Sumter),
Carnathon,	Ledbetter,	Samford,
Case,	Lowe, of Jefferson,	Sollie,
Coleman, of Walker,	Lowe, of Lawrence,	Thompson,
Cornwall,	Miller (Marengo),	Watts,
Foster,	Morrisette,	Weatherly,
Gilmore,	Murphree,	Willet,
Glover,	Norwood,	Williams (Marengo),

By a vote of 107 ayes and 12 noes the article was adopted.

**THE PRESIDENT**—The article will be ordered printed and referred to the Committee on the Order, Consistency and Harmony of the Whole Constitution.

The article of Banks and Banking being called—

**MR. HENDERSON**—I desire to explain my vote upon this article. I shall vote against the adoption of the report because I do not believe that Sections 8 and 9 should be embodied in the Constitution.

The article was read as follows :

#### ARTICLE XIV.

**Section 1.** Subdivision Banks and Banking. The General Assembly shall not have the power to establish or incorporate any bank or banking company or money institution, for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

**Sec. 2.** No bank shall be established otherwise than under a general banking law, nor otherwise than upon a specie basis. Provided, that any bank may be established with authority to issue bills to circulate as money in equal amount to the face value of bonds of the United States or of this State, convertible into specie at their face value, which shall, before such bank is authorized to issue bills for circulation, be deposited with the State Treasurer or other depository prescribed by law in an amount equal to the aggregate of such proposed issue, with power in such Treasurer or depository to dispose of any or all of such bonds for a sufficient amount of specie to redeem the circulating notes of such bank at any time and without delay, should such bank suspend specie payment, or fail to redeem its notes on demand.

**Sec. 3.** All bills or notes issued as money shall be at all times redeemable in gold or silver, and no law shall be passed sanctioning directly or indirectly the suspension of any bank or banking company of specie payment.

**Sec. 4.** Holders of bank notes and depositors who have not stipulated for interest, shall for such notes and deposits, be entitled in case of insolvency, to the preference of payment over all other creditors. Provided this section shall apply to all banks whether incorporated or not.

**Sec. 5.** Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization (unless the General Assembly shall extend the time) and promptly thereafter close its business, but shall have corporate capacity to sue and shall be liable to suits until its affairs and liabilities are fully closed.

**Sec. 6.** No banks shall receive directly or indirectly a greater rate of interest than shall be allowed to individuals for lending money.

**Sec. 7.** Neither the State nor any political subdivision thereof shall be a stockholder in any bank, nor shall the credit of the State ever be given, or loaned, to any banking company, association or corporation.

**Sec. 8.** The General Assembly shall by appropriate laws, provide for the examination, by some public officer, of all banks and

banking institutions and trust companies engaged in banking business in this State. And each of such banks and banking companies or institutions shall, through its President or such other officer as the General Assembly may designate under oath, make a report of its resources and liabilities at least twice a year.

Sec. 9. That the provisions of this article shall apply to all banks, trust companies and individuals doing a banking business except national banks, whether incorporated or not.

THE PRESIDENT—The question will be upon the adoption of the ordinance.

And upon a call of the roll the vote resulted as follows:

#### AYES.

Messrs. President,	Greer, of Perry,	Norman.
Almon,	Haley.	Oates,
Ashcraft,	Handley,	O'Neal (Lauderdale),
Banks,	Harrison,	O'Neill (Jefferson),
Barefield,	Heflin, of Chambers,	Opp,
Beddow,	Heflin, of Randolph,	Palmer,
Bethune,	Hinson,	Parker (Cullman),
Blackwell,	Hodges,	Parker (Elmore),
Boone,	Hood,	Pearce,
Brooks,	Howell,	Pettus,
Browne,	Howze.	Pillans,
Bulger,	Inge,	Pitts,
Burnett,	Jackson,	Porter,
Burns,	Jenkins,	Proctor,
Cardon,	Jones, of Bibb,	Reynolds (Henry),
Carmichael, of Colbert,	Jones, of Wilcox,	Robinson,
Cobb,	Kirk,	Rogers (Lowndes),
Cofer,	Kirkland,	Sanders,
Coleman, of Greene,	Kyle,	Sanford,
Cornwall,	Leigh,	Searcy,
Craig,	Locklin,	Selheimer,
Cunningham,	Lomax,	Sentell,
Davis, of Etowah,	Lowe (Jefferson),	Smith, Mac. A.,
Dent,	Macdonald,	Smith, Morgan M.,
Duke,	McMillan (Baldwin),	Spears,
Espy,	McMillan (Wilcox),	Sorrell,
Ferguson,	Malone,	Spragins,
Fitts,	Martin,	Stewart,
Fletcher,	Maxwell,	Tayloe,
Glover,	Miller (Wilcox),	Studdard,
Graham, of Talladega,	Moody,	Waddell,
Grant,	Mulkey,	Vaughan,
Grayson,	Murphree,	Weakley,
Greer, of Calhoun,	NeSmith,	White,

<b>Whiteside,</b>	<b>Williams (Barbour),</b>	<b>Wilson (Wash'gton),</b>
<b>Williams (Elmore),</b>	<b>Wilson (Clarke),</b>	<b>Winn.</b>
<b>Total—108.</b>		

## NOES.

deGraffenreid,	Freeman,	Reese,
Eley,	Henderson,	
Foshee,	Long (Walker),	
<b>Total—7.</b>		

## ABSENT OR NOT VOTING.

Altman,	Jones, of Hale,	Reynolds (Chilton),
Bartlett,	Jones, of Montgomery,	Rogers (Sumter),
Beavers,	King,	Samford,
Byars,	Knight,	Sloan,
Carmichael, of Coffee,	Ledbetter,	Smith (Mobile),
Carnathon,	Long (Butler),	Sollie,
Case,	Lowe (Lawrence),	Thompson,
Chapman,	Merrill,	Walker,
Coleman, of Walker,	Miller (Marengo),	Watts,
Davis, of DeKalb,	Morrisette,	Weatherly,
Eyster,	Norwood,	Willet,
Foster,	O'Rear,	Williams (Marengo),
Gilmore,	Phillips,	
Graham, of Montgomery,	Renfro,	

And by a vote of 108 ayes and 7 noes the article was adopted.

**MR. KIRKLAND**—I was not in the room at the time the vote was taken on the Article on State and County Boundaries. I desire to vote for the adoption of the report of that Committee, and vote "aye."

**THE PRESIDENT**—It seems to the Chair that it is too late for the gentleman to be recorded. The result has been announced and the Article referred to the Committee on Order, Consistency and Harmony.

**MR. O'NEAL**—I am directed by the Committee on Rules to report a resolution.

The resolution was read as follows:

Resolution No. 255, by Rules Committee:

Resolved, that the rules of the Convention limiting debate be suspended when the report of the Suffrage Committee is taken up for consideration, and that each delegate be allowed to speak once, and not longer than thirty minutes upon any proposition presented by the report of the Committee or any amendment thereto, except that the Chairman of the Committee or mover of the amendment,



or such delegate as such Chairman or mover may yield his time to, may, after the previous question has been ordered, close the debate, and in so doing may speak for a like period of thirty minutes; provided, that the time here limited may be extended by a majority of the delegates voting without a suspension of the rules.

MR. KIRKLAND—I make the point of order that the report is not in order at this time.

THE PRESIDENT—The report of the Committee is a privileged report.

MR. O'NEAL—I desire to state that the resolution is in accordance with the suggestions of the Committee on Suffrage.

Upon a vote being taken the resolution was adopted.

THE PRESIDENT—Special order will be the consideration of the report of the Committee on Legislative Department. Inasmuch as Section 27 was reconsidered, it would seem to be in order to recur to that section. The question is upon Section 27 which was reconsidered upon the amendment offered by the gentleman from Greene, to the substitute offered by the gentleman from Macon to the Section as reported and the amendment offered by the gentleman from Greene which was to strike out the amendment and Section.

MR. SANFORD—I ask for information, are any of these amendments in order? until the question of reconsideration has been determined?

THE PRESIDENT—The question of reconsideration has been determined and the Convention has voted to reconsider.

MR. SANFORD—I was absent at the time.

MR. COBB—It seems to me that this Convention is at times in danger of becoming dangerously impatient. We had an exhibition of this spirit on yesterday. At one time, we had under consideration a proposition as harmless as an infant and yet the gentlemen have spent hours of time here discussing it and we sat and listened to protests that made the hair of timid delegates like myself rise up. We can see the walls of this Capitol crumbling; we can see the great pillars that sustain our republican institutions falling and everything going to Sheol and I don't know where else, and all because it was proposed to impose upon the Governor of Alabama some labor that he ought to have been here to protest against; a proposition I confess that ought not to have been in the Constitution, but as utterly harmless as anything could be conceived to be. That was one spectacle, and then we had another and that was to see the delegates of this Convention turn immediately around and adopt and fasten into the Constitution a provision that would so hamper the legislative department of the State

of Alabama that we could not foresee the evils which would come from it. At one moment, we had a usurping Governor that was to be shackled; at another moment, we struck off the shackles and put them upon the legislative department of the government. Men fresh from the people. Fortunately for us, the right of reconsideration remains and now if these members will just simply possess their souls in patience a little bit, and recover a small amount of their common sense, they will be enabled to see the mischief that they did on yesterday. I think we have fallen into the error, Mr. President, of thinking of ourselves as partisans, as Democrats, as the people—"we are the people," and all power and authority and all wisdom resides with us, and yet we are proposing here, and as has been repeatedly asserted, this is the main work before us—to make a Constitution which will dangerously affect our supremacy. Pass the Constitution which you propose to frame and adopt it, strike off the shackles which have been upon the people, and you will get something more than we have heretofore had in Alabama of free thought, of free speech, and free political action, and when we get that, who of you are so wise as to predict that the day is not distant when some other political party than the Democratic may have some control of the affairs of our State? I am not saying it is to be deprecated by any means, for if that time comes it will be an evidence that we have got another or other political parties in Alabama which are respectable besides the Democratic. Now, Mr. President, let me see if I can make good the assertion that I advanced a moment ago and which leads me to make the proposition that I do before the House to strike out the whole of this Section 27. If you strike out from that Section a duty that is imposed upon the Governor and the Auditor and the power which is given to these officials, then you will leave them to the Constitution something which is a work of supererogation merely. You put in something which the Legislature already possesses and therefore utterly unnecessary. Hence, Mr. President, the whole argument turns upon the proposition of excluding from this provision or leaving within it the power which is conferred here upon the Governor or upon the Auditor to make an estimate for the Legislature and that is the reason I am opposed to the amendment of my good friend from Greene. Otherwise, it would be all right except for the reason that I have given of putting something unnecessary in the Constitution, but as long as you leave there the power in the Governor and in the Auditor to make these estimates for the Legislature, you give to them a dangerous prerogative. Now, there is no sort of question in my mind about the correctness of the interpretation of the gentleman from Greene of this provision. Leave it as it comes from the Committee, and you make it absolutely impossible for the Legislature of the State of Alabama to appropriate money that is already in the State Treasury for general purposes. The surplus that comes from year to year from general

appropriations and which goes into the Treasury as a part of the State revenue, cannot be touched under this provision as it comes from the Committee for general purposes and there can be in my mind at last no doubt of that fact. The gentleman from Greene in that regard is eminently correct, but I repeat the viciousness lies in the fact that he does not go far enough and strike down this dangerous power that is to be given to the Governor and the Auditor. I say it is dangerous and I emphasize it. I do not know how to be understood, but I make use of that term that I expect the devil is to be to pay in our institutions whether we drop it or not. I do not mean that you tear down the Capitol and the pillars of the republic and all that sort of thing. We are going to live and flourish and be a people and a self-governing people, notwithstanding the greivous mistakes of this Constitutional Convention, but we are sensible people. Now look at it in a sensible and common-sense way. Suppose the time comes when you have in the Executive Chair a Republican Governor. Suppose the time comes when you have a Republican Auditor and a Democratic General Assembly. Then what is your condition. Under this provision as it is now framed, during any regular session of the Legislature the aggregate appropriations made shall not exceed in amount the incomes from the revenues of the State for the current fiscal year—that is not all—as estimated by the Governor and Auditor. This Republican Governor and his Republican Auditor are about to step down and out. A Democratic Governor and a Democratic Auditor are about to succeed him. You have a Democratic General Assembly, or vice versa, then what? This Governor and this Auditor will make it absolutely impossible if they are vicious enough to use their power improperly for the affairs of the State of Alabama to be conducted. They make the estimate and propose these estimates to the General Assembly. The General Assembly cannot change them although it knows as a matter of fact they are viciously, improperly and wrongfully made. Not a single dollar that we appropriated out of the State Treasury for general purposes except to the amount estimated for by these two hostile officers and therefore they absolutely tie the hands of the Legislature so this body that comes from the people and represents the interests of the people, the body that is nearer in touch with the people than any other, cannot make an appropriation for the ordinary general expenses of the State of Alabama. That is the condition that you are placed in. Now, Mr. President, I will not prolong the argument, but I want to say my proposition is to strike out the whole of it, partly for the reason I have given, but mainly for the fact that we can and ought to trust the General Assembly of the State of Alabama in managing the affairs of the State. Why, sir, the very foundation of our government is trust in the people, confidence in the people, the integrity and wisdom of the people, and you say that from time to time there will

be brought here members of the Legislature who are not to be trusted, who sell out who can be influenced by this state of affairs and that, or by this influence and that, you make a direct attack upon the wisdom and the intelligence and the honesty of the people themselves. For these reasons, Mr. President, I believe the whole Section ought to be stricken out of this report.

MR. KIRKLAND—I call for the previous question.

Mr. Harrison requested Mr. Kirkland to yield. The gentleman declined.

MR. COLEMAN (Greene)—It is my substitute. I believe that I have the right to close the argument. It was reconsidered and I offered the amendment, and they cannot cut me off.

THE PRESIDENT—The previous question is asked on the original Section and the amendment.

MR. COLEMAN—That authorizes me to close the argument?

THE PRESIDENT—That authorizes the Chairman of the Committee.

MR. OATES—In this matter the Chairman of the Committee has been knocked out, he has nothing to say.

MR. HARRISON—Do I understand the delegate to refuse to yield a moment?

MR. KIRKLAND—I will yield if the gentleman from Lee will renew my motion. I will withdraw it.

MR. HARRISON—I will. I am not in favor of either of the propositions pending. I think there is merit in the proposition as offered by the Committee, and I think that the majority of the delegates in this Convention have by a decided vote expressed their approval of the proposition, but I do agree in a great measure with the remarks of the delegate from Macon, and entirely in the remarks of the delegate from Greene, but in deference to the expressed wish of the delegates of this Convention, in favor of the proposition that the General Assembly of Alabama should be prohibited, or the Legislature as we now call it, from making appropriations that shall exceed in amount the income of the revenues of the State, I submit that this cannot be properly incorporated into the Constitution and the matter left to the discretion of the Legislature. This is mandatory language, and the Legislators having sworn to support the Constitution—I think it will make them careful and guarded, and so far as he understands the situation that he would not make greater appropriations than are approved by the Constitution. I heartily endorse the proposition of the danger in there, relying upon the assessment or estimate made by the Governor and Auditor. In the first place, I think that it is

a duty that should be left to be discharged by the Legislature itself. In the next place, Mr. President, I know of no law and I believe the question was asked the distinguished chairman of this committee, I don't remember his answer, where is there any law constitutional or otherwise requiring the Governor or the Auditor to make this estimate? Mr. President the gentleman said if there was a conflict between them that the Governor would rule. I do not understand but that it is left to the joint opinion of these two officers, or joint estimate. Suppose they differ, there is no provision made to require them to do it. Suppose they fail to agree? I object to its first, because I think it is invading the prerogative of the Legislature, and, second, it is impracticable and cannot well be enforced, and yet I favor the general proposition and not only see no harm in it, but in view of the fact that past Legislatures have appropriated more than the income. I think it would be a reasonable provision that you should not exceed your income. It is a business proposition addressed to the Legislature. I had hoped, Mr. President, that if I could have gotten the floor in time, I had intended to offer an amendment by striking out the words "as estimated by the Governor and Auditor," where they occur in this section. With that stricken out I believe it would be a good provision—we would adopt all the merit that is in the suggestion emanating from the committee and relieved of all the term so ably presented by the delegate from Macon and others, and representing this view and trusting that the Convention will vote down this proposition I move to make under my agreement with the delegate from Dale that I would call the previous question—

MR. OATES—I would like to ask the gentleman from Lee whether he takes any issue with this: Section 24 requires the Auditor to give information to the Governor, and Section 11 of the Constitution says the Governor shall from time to time, give the General Assembly a statement of the condition of the government and at the commencement of the session of the General Assembly, and at the close of his office—

MR. HARRISON—In reading the Constitution you are taking up all of my time.

MR. BROWNE—Can the Legislature enact a law requiring the Auditor and Governor to make an estimate?

MR. HARRISON—They might or might not. You are requiring something here now, limiting the Legislature itself to an estimate and under your present Constitution, if you are going to make a constitutional provision of it you will have to put something else in to provide for it, which I think ought not to be done, and I hope won't be done. When interrupted by the gentleman from Montgomery I was proceeding to state my position, and ask the Convention that the previous question be called, let us vote it

down and let us vote on the pending amendment—if the Convention agrees with me, it is only my opinion, I think there is merit in the amendment.

MR. COBB—I would like to ask the gentleman a question.

MR. HARRISON—I believe my time is out. I would love to answer the gentleman's question.

MR. COBB—I move to extend the time of the gentleman, he has been interrupted, and that he be allowed five minutes.

THE PRESIDENT—The motion would not be in order.

MR. COBB—I move to suspend the rules.

Upon a vote being taken the Convention refused to suspend the rules.

MR. HARRISON—I do not want but a moment only wanted to present the question to the Convention and appeal to the gentlemen who are so very much opposed to this measure, that some of us will vote to strike out what you think the harm is, but I will not, because I think there is some merit in the general proposition, and I think it is a good provision that the appropriation shall not exceed the income of the State.

MR. O'NEAL—Allow me to ask a question.

MR. HARRISON—No sir; my time is out. I hope the Convention understands my position, and I hope the gentlemen will vote to strike out, and I will if I get an opportunity. I will have to call the previous question.

THE PRESIDENT—The question is on the section as reported and the pending amendments. The question is shall the main question be now put?

Upon a vote being taken, the previous question was ordered by 64 ayes to 34 noes on a division.

THE PRESIDENT—I recognize the gentleman from Montgomery.

MR. OATES—I don't care about occupying the floor at all, and yield it to the delegate from Greene.

MR. O'NEAL—I suggest that the gentleman from Greene made the motion, and he had a right to close.

THE PRESIDENT—The ruling of the chair has been uniform in this Convention where the previous question is ordered on the amendment and original section, the right to close cannot rest in two delegates, therefore the chair has uniformly referred it to the chairman of the committee.

MR. O'NEAL—I did not understand the motion. I thought it was on the amendment.

THE PRESIDENT — The gentleman from Montgomery yields to the gentleman from Greene.

MR. COLEMAN (Greene)—I will inquire whether a motion has been made to adopt the amendment.

THE PRESIDENT—Yes. The immediate question now is upon the substitute offered by the gentleman from Macon to strike out the amendment offered and the original section as reported by the committee.

MR. COLEMAN—The amendment which I offered simply puts this section precisely where you placed it yesterday when you adopted the section. The defect in it was in not providing for a surplus if it might accumulate. It was almost impossible to solve properly a statement by hearing it read as we hear these statutes read, and I was not surprised that the real significance of the section had been overlooked. My only purpose was to remedy the section and put it precisely as you thought it was when you adopted it yesterday, and that is the effect of it at this time. My friend, Judge Cobb, has said as much on one side of this question as he understood the other. If you analyze this section and give it its full significance, it means nothing more nor less than he has contended for and I say to the distinguished gentleman from Lee that the amendment he proposes will amount to nothing upon a legal construction of it. All he wants is there, when you understand. Now, what power is given there except for the Governor to furnish an estimate for the information of the Legislature and the provision in there that the appropriation shall not extend beyond the estimate given by him was fatally vicious in leaving out the fact that if the income exceeded that, that the Legislature had no authority beyond, but as amended it amounts merely to this, whatever income or revenue may be derived from the State is subject to the appropriation of the Legislature, the only limitation upon them is that they cannot put this State in debt beyond the revenues of the State.

MR. COBB—Will the gentleman allow me to interrupt him?

MR. COLEMAN—Certainly.

MR. COBB—Does not your motion still limit the Legislature in its power of appropriation to the estimate made by the Governor and Auditor?

MR. COLEMAN—That is precisely what it does not do.

MR. COBB—Does not limit it?

MR. COLEMAN—It limits the appropriations to the estimate made and whatever surplus may be in the Treasury.

MR. COBB—One moment, if you please. Suppose there be no surplus, then would it limit it to the estimate of the Auditor and Governor?

MR. COLEMAN—I, for one, sir, think it does precisely what the Convention intended it to do, and that is to keep the Legislature from putting the State in debt beyond the revenues, and that is what we adopted yesterday.

MR. COBB—Beyond the estimated revenues by the Auditor and Governor?

MR. COLEMAN—If the revenue is not beyond the estimate, why, then, it ought not to make appropriations beyond the estimate. If the revenue is beyond the estimate, then the Legislature has control and can appropriate it. Every objection that they have raised is fully covered by the amendment. Not only does the Convention carry out its original designs, but the State is secured and no harm can result.

MR. HARRISON—Will the gentleman allow a question?

MR. COLEMAN—Yes, sir.

MR. HARRISON — Do I understand that you insist your amendment obviates our objection to the estimate being made by the Governor and Auditor?

MR. COLEMAN—Mr. President and delegates of the Convention, I am not sitting as a judge and neither do I presume to say that I embody all the wisdom of the law. That is my opinion and that is what it was put there for, and if anybody can say that it is to the contrary, I would like to hear him say so. There are words there that they are afraid of, but the object is to authorize the legislature to appropriate whatever income or revenues there may be to the State.

MR. HARRISON—And there would be no harm in the estimate?

MR. COLEMAN—The estimate is an implied duty imposed upon them but the estimate does not limit the authority of the legislature to make appropriations up to the revenue, and the Governor and Auditor ought, for the information of the legislature, to present these estimates there, but when they do that there is the extent of their power and the legislature comes in and appropriates all of the revenues whether beyond the estimate or not. That is all I have to say.

THE PRESIDENT—And the question is upon the adoption of the substitute offered by the gentleman from Macon.



MR. BROWNE—I rise to a question of information, delegates do not know what they are voting on. Is it the amendment of the gentleman from Greene or the substitute of the gentleman from Macon?

MR. BOONE—I rise to a question of privilege, the gentleman assumes too much when he claims that the delegates do not know what they are voting on.

MR. BROWNE—I say several gentlemen do not know, and I am one of them. Is the question upon the amendment of the gentleman from Macon?

THE PRESIDENT—The Chair will state the question—the Chair stated it very distinctly, but will state it again. The question is upon the adoption of the substitute proposed by the gentleman from Macon. As many as favor the adoption of that substitute will please rise and remain standing until counted.

The vote resulted in there being 55 ayes and 60 noes and the substitute was lost.

MR. O'NEAL—I call for a verification of the vote. I ask for one other vote—I think some sat down—it was mixed up, a verification is what I want.

MR. WATTS—I call for an aye and no vote.

The call for an aye and no vote was sustained.

MR. WILLIAMS (Elmore)—Please have the substitute and amendment both read.

THE PRESIDENT—The substitute is to strike out the section and the amendment of the gentleman from Greene.

MR. WILLIAMS (Elmore)—What is the amendment of the gentleman from Greene.

THE PRESIDENT—The Secretary will read the amendment.

The Secretary read the amendment as follows: "Amend Section 27 by adding to the section the following: 'And any surplus that may be in the State Treasury provided that if from any cause it becomes necessary to rebuild the Capitol of the State, the legislature is authorized to make such appropriation as may be required.'"

Substitute by Mr. Cobb — "To strike out the Section and amendment.

The roll call resulted as follows:

#### AYES

Messrs. President,  
Almon,

Ashcraft,  
Banks,

Bethune,  
Blackwell,

Boone,	Jones, of Bibb,	Pillans,
Brooks,	Jones, of Montgomery,	Proctor,
Burns,	Kirkland,	Reese,
Carmichael, of Colbert,	Knight,	Robinson,
Cobb,	Leigh,	Rogers, of Lowndes,
Cunningham,	Lomax,	Samford,
Davis, of DeKalb,	Long, of Walker,	Selheimer,
Davis, of Etowah,	Lowe, of Jefferson,	Sentell,
Dent,	McMillan, of Wilcox,	Sloan,
Eyster,	Maxwell,	Smith, of Mobile,
Ferguson,	Merrill,	Sorrell,
Fitts,	Miller, of Wilcox,	Spears,
Foshee,	Moody,	Vaughan,
Graham, of Montgomery,	Mulkey,	Waddell,
Greer, of Calhoun,	NeSmith,	Watts,
Haley,	Norman,	Weakley,
Handley,	O'Neal, of Lauderdale,	White,
Harrison,	O'Neill (Jefferson),	Williams, of Marengo,
Heflin, of Chambers,	Opp,	Williams, of Elmore,
Heflin, of Randolph,	O'Rear,	Wilson, of Clarke,
Hodges,	Parker, of Cullman,	Wilson, of Washington
Hood,	Parker, of Elmore,	
Howell,	Pettus,	

TOTAL—73

## NOES

Altman,	Grayson,	Palmer,
Barefield,	Greer, of Perry,	Pearce,
Beddow,	Henderson,	Pitts,
Browne,	Hinson,	Porter,
Bulger,	Howze,	Reynolds (Henry),
Burnett,	Inge,	Sanders,
Cardon,	Jackson,	Sanford,
Chapman,	Jenkins,	Searcy,
Cofer,	Jones, of Wilcox,	Smith, Mac A.,
Coleman, of Greene,	Kirk,	Smith, Morgan M.,
Cornwall,	Kyle,	Spragins,
deGraffenreid,	Locklin,	Stewart,
Duke,	Macdonald,	Studdard,
Eley,	McMillan (Baldwin),	Tayloe,
Espy,	Malone,	Walker,
Fletcher,	Martin,	Whiteside,
Glover,	Murphree,	Williams, of Barbour,
Graham, of Talladega,	Oates,	Winn,

TOTAL—54

## ABSENT OR NOT VOTING

Bartlett,	Byars,	Carnathon,
Beavers,	Carmichael, of Coffee,	Case,

Coleman, of Walker,	Ledbetter	Rogers, of Sumter,
Craig,	Long, of Butler,	Reynolds, of Chilton,
Foster,	Lowe, of Lawrence,	Sollie,
Freeman,	Miller, of Marengo,	Thompson,
Gilmore,	Morrisette,	Weatherly,
Grant,	Norwood,	Willet.
Jones, of Hale,	Phillips,	
King,	Renfro,	

During roll call:

MR. BAREFIELD—I would like to vote but I do not know whether it is a motion to table the substitute offered by the gentleman from Greene.

THE PRESIDENT—The motion is not to table, it is to strike out the section.

MR. BAREFIELD—I vote no.

THE PRESIDENT—Upon casting up the vote it appears that there are 73 ayes and 54 noes and the substitute is adopted.

MR. KYLE—I desire to offer a substitute for Section 27.

THE PRESIDENT—It is out of order. The Secretary will read the next section.

Section 29 was read as follows:

Sec. 29. All bills for raising revenue shall originate in the House of Representatives; but the Governor, Auditor, Treasurer and Attorney General shall, before each regular session of the legislature, prepare a general revenue bill to be submitted to the legislature for its action, and the Secretary of State shall have printed for the use of the legislature a sufficient number of copies of the bill so prepared which the Governor shall transmit to the House of Representatives as soon as organized. The Senate may propose amendments to revenue bills. No appropriation or revenue bill shall be passed during the last five days of the session.

MR. JACKSON—Am I in order to offer a substitute for Section 29?

THE PRESIDENT—There are two pending substitutes.

MR. BOONE—I desire to ask unanimous consent to withdraw the substitute I offered and offer this one in its place.

MR. LOMAX—On yesterday when the substitute of the gentleman from Mobile was offered I made a point of order on the substitute, and I do not want to lose—

THE PRESIDENT—The gentleman is correct, but the point of order would apply equally to the substitute.

MR. LOMAX—Very well, sir.

THE PRESIDENT—The Chair will now rule upon the point of order made by the gentleman from Montgomery. It seems to the Chair that the point of order is not well taken. A substitute is regarded by all the authorities that the Chair has examined as merely a form of amendment. Every amendment, says Mr. Cushing in his work on Law Practice of Legislative Assemblies, which can be proposed whether by leaving out or adding, or leaving and adding, is itself susceptible of amendment, but there can be no amendment to an amendment to an amendment. Thus, if a proposition consists of AB, and it is proposed to amend by inserting CD, which is an entire substitute, strikes out the whole and adds a different proposition entirely, it may be moved to amend the amendment by inserting EF, but it cannot be moved to amend this amendment as for example by inserting G. It seems to the Chair that the substitute offered by the gentleman from Mobile will be in order. The point of order is overruled.

MR. LOMAX—Will the chair permit a parliamentary inquiry? I would like to ask if in Cushing's Law and Practice there is any treatment separately of a substitute?

THE PRESIDENT—There is not, but the substitute is regarded and so stated by Mr. Cushing that a substitute is a mere form of amendment.

MR. LOMAX—Did the Chair ever examine the rule of the House of Representatives in Congress with reference to substitutes?

THE PRESIDENT—The Chair has not. The rules of the House of Congress would not govern this body.

MR. LOMAX—No, sir, certainly not, except as a precedent.

THE PRESIDENT—The question is upon the substitute offered by the gentleman from Mobile. The Secretary will read the substitute.

The Secretary read the substitute as follows: "All bills for raising revenue shall originate in the House of Representatives. The Governor, Auditor and Attorney General shall before each regular session of the Legislature prepare a general revenue bill to be submitted to the Legislature for its information, and that the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill so prepared which the Governor shall transmit to the House of Representatives as soon as organized to be used or dealt with as that House may elect. The Senate may propose amendments to revenue bills. No appropriation or revenue bill shall be passed during the last five days of the session.

MR. OATES. Mr. President, the substitute, the whole operation of it is a repetition except it substitutes for the word "action" the word "information" which is unobjectionable—it was always intended by the word "action" and then on the seventh line, I would suggest to the gentleman from Mobile that it ought not to contain "appropriation of" those words should be omitted. No revenue bill should be passed during the last five days of the session, but this should not apply to appropriation bills.

MR. BOONE. I would say, Mr. President, that the delegate from Mobile followed in the last seven lines the exact wording of the report of the committee.

MR. OATES. That is quite true, but I had not the opportunity of offering that amendment—that should not be in there, those two words, and I ask unanimous consent to strike them out, "appropriation of" two words in the seventh line—so that it will read that no revenue bill shall be passed during the last five days.

There being no objection the amendment was ordered.

MR. BOONE. I ask that the same words be stricken out of the substitute.

The consent was given.

THE PRESIDENT.—The question is on the adoption of the substitute.

MR. BLACKWELL. I hope that substitute will not be adopted, and I do hope very much that the substitute of the gentleman from Dallas will be adopted. The substitute of the gentleman from Mobile does not cure, so far as I can see, the defects in the section at all. It still leaves the power with the Governor and the Auditor to prepare this general revenue bill for the Legislature, no matter for what purpose it is prepared, and it takes out of the hands of the Legislature the right to prepare that bill. The difference between the separate departments of government undoubtedly is that while the Legislature enacts the laws, the Executive executes and the judiciary construes the law. The power of the Governor insofar as the Legislative Department is concerned, is confined almost exclusively to the approval of bills. As the Executive, he communicates to the two houses information concerning the condition of the State, and he may recommend measures to their consideration, but heretofore he has never been allowed to originate or introduce bills, and the power to appropriate money, or to provide for the expenses of the government has been lodged in those that directly represent the people. The power to originate all bills for the purpose of raising revenue has been confined exclusively to the legislative body heretofore, in both

houses, the Senate having the right to make amendments to such bills. This section proposes a radical change in this long settled policy, and it proposes that change without any satisfactory reason being offered for it. There is no showing of incompetency upon the part of the Legislature, or of the superior qualities of the Governor and the Auditor to do this, in any arguments that have been made upon this floor. If this Section means nothing but to allow the Governor to simply make a recommendation, or furnish information as the gentlemen have said, then why change its phraseology, and why alarm the conservatives who desire to keep separate and distinct the co-ordinate branches of the government. If it is simply a recommendation, he has that power now.

Mr. President, we have made the Legislature a target since we convened here. There is no question about that. The Legislature has been made a target, we opened fire on it with musketry, and then with mountain howitzers, and now we are bringing up the siege guns. Everything has been brought to bear against the Legislature, and we have been constantly encroaching on that branch of the government. I suppose after we have hampered it, and destroyed its power to a very large extent, that the only reason we have got now for continuing to shoot at it is upon the same theory that the man continued to beat a vicious dog, after killing the dog, in order to show that there really was punishment after death. That is the theory upon which we still seem to be shooting at the Legislature. It is my opinion that the people are not clamoring for us to take this power out of the hands of 133 of the representatives that they choose, and put it in the hands of the three State officials who cannot know the various conditions of this State as well as the Representatives do. Why should we think that the Governor and Secretary of State and the Attorney-General know more about framing a bill for the people than 133 representatives selected directly by the people. Those representatives have aside from their own knowledge access to the information of these officers, and they are entitled to advise with them, and to have the recommendation of the Governor without having that recommendation put in the form that it is here. The proposed change would rob them of the power that they have always had since the formation of our State. This is a consolidation of powers which takes away one of the checks upon one of the powers of one of the branches of the Government. Mr. Webster in talking about matters of this character said that every encroachment, great or small, is enough to awaken the attention of those who are entrusted with the preservation of constitutional government, and this is an encroachment on the legislative branch of the Government by another co-ordinate branch of the Government. We do not have to wait until great public misfortune comes, or wait until our liberty is put in jeopardy before we see the dangers that confront us. Our fathers saw them in a change in the British

Parliament, and the assembled principles of mischief there and the germ of unjust power. They detected it, and as Mr. Webster says, they dragged forth that germ of unjust power, that invasion of the rights of the people, and they kept it before their eyes, and directed their active efforts against it until it was destroyed. Our Legislature will not want to be shorn of this power. The people who send us here did not ask us to take away this power from the Legislature, and the Governor and the other State officers on whom we desire to place this additional power have not asked for it, and it has not been proposed in anything that we have said to the people to give them this additional power. They have enough to do with their other duties that devolve upon them. They are not trying to rob any co-ordinate branch of the Government of power, and the people are not asking us to confer it upon them. It seems we may sometimes properly fear ourselves in what we are doing. We hold the trust that we have here for the benefit of the people.

MR. MACDONALD—Is it not a fact that one of the greatest evils that the people of Alabama have been troubled with for the past fifteen or twenty years is in artificial and hastily drawn revenue bills.

MR. BLACKWELL—There may be something in that. There may have been some bills improperly drawn, but as a matter of fact the gentleman does not know that it was because they were hastily drawn. They have had plenty of time to draw these bills, and he does not know and cannot say that the Governor, the Auditor and the Attorney-General can draw a bill more perfectly than 133 Representatives.

MR. O'NEAL—They may have drawn the last bill.

MR. MACDONALD—No they did not. The record shows that.

MR. BLACKWELL—As a matter of fact it is not shown that the Governor would make it any more perfect. The reasons for what we do in this matter of invading a co-ordinate branch of the Government must not be doubtful. We must know that it is a benefit and that the people desire it and are willing to have it. It must not be that character of intention which like the twilight, lingering between night and day, takes on the hues of both. As a matter of fact, it must be clear and effulgent. The reason, the benefit, and all must be clearly shown.

After all the abuse we have heaped upon the Legislature, I desire to say that they put into operation this Constitution under which we have lived since 1875, and they have enacted the laws which have enabled us to drive out the enemies of white man's government in this country, and restored the Government to the white people of Alabama again, and I think we are going a little

too far in our efforts here to invade the province of the Legislature of the State of Alabama, and I hope very much that the original Section as it appears in our present Constitution, and offered by the gentleman from Dallas as a substitute, will be adopted by this Convention.

MR. SMITH (Mobile)—There was a resolution referred to the Judiciary Committee instructing it to consider and advise the Convention as to its power to order the continuance of pay to the members and officers of the Convention after the expiration of fifty days. The Committee finding that the Attorney-General was advising the State officers on the subject, ascertained that they would be inclined to act upon the opinion of the Attorney-General, and in accordance with the views of the Attorney-General the Committee has drafted an ordinance which I now present and ask that the rules be suspended and that the ordinance be adopted.

Ordinance No. 424, by Judiciary Committee.

Be it ordained by the people of Alabama in Convention assembled, That this Convention shall continue in session until it shall, by careful revision and amendment of the present Constitution, frame and adopt a revised Constitution for this State.

Be it further ordained, That during the time this Convention shall so continue in session, the officers thereof shall receive the same compensation, payable out of the Treasury of the State, as corresponding officers of the House of Representatives are by law allowed; and that the delegates shall receive for their services the same per diem and mileage from the Treasury of the State as is allowed the members of the General Assembly. The payment shall be made on the certificates of the President and Secretary of the Convention, to the Auditor of the State, as payment of compensation to members of the General Assembly is by law directed to be made.

Upon a vote being taken, the rules were suspended.

THE PRESIDENT—The question will be upon the adoption of the ordinance.

MR. REESE—I desire to ask whether it will be necessary to suspend the rules specifically, to prevent the re-reading of this ordinance. I believe, under the laws we have adopted in this Convention, that it requires three readings. Will there have to be a specific motion to suspend that particular rule?

THE PRESIDENT—It seems that a motion to suspend the rules would cover that point. The question the chair desires to submit is whether the Convention desires the ordinance to be passed by a yea and nay vote.

MR. deGRAFFENREID—I call for an aye and no vote.



MR. JONES (Montgomery)—I ask that the ordinance go over until tomorrow.

MR. SMITH—As far as the committee is concerned, I know of no objection.

MR. JONES (Montgomery) — I hope that the ordinance will go over until tomorrow. I have been of a diffident opinion, but it is possible I may be convinced when I hear the Attorney General's opinion. It is too important a question to be taken up now.

MR. O'NEAL—I desire to ask whether it would not be necessary for us to dispense with the second reading and order this to a third reading. We have had no second reading of this ordinance, and under the rules that is required.

MR. SMITH (Mobile)—Our idea was that it should be drawn and submitted to the Convention for its action. I want to state that the resolution is a reiteration of the language of the Enabling Act, except that the limitation is omitted and the provision for pay is expressly extended indefinitely. The Attorney General stated that he would prefer that it should be put in that language, and the committee adopted his suggestion. His views upon the subject were that it would be sufficient whether provided for by ordinance or resolution, but he suggested that it be put in the form of an ordinance.

MR. WHITE—I ask for a reading of the ordinance.

MR. FITTS—I demand the previous question on the adoption of the ordinance by an aye and no vote. Under the Constitution of 1875 it takes an aye and no vote.

THE PRESIDENT—Will the gentleman from Tuscaloosa yield to the gentleman from Jefferson.

MR. FITTS—No, sir.

THE PRESIDENT—The question will be upon the motion of the gentleman from Tuscaloosa for the previous question, unless the gentleman yield for an amendment.

MR. WHITE—I thought I had the floor.

MR. FITTS—I declined to yield.

MR. HARRISON—I submit that the delegate from Jefferson was on the floor and had secured the recognition of the chair before the gentleman from Tuscaloosa made the motion.

MR. WHITE—I understood the chair recognized me.

THE PRESIDENT—The chair did not intend to cut off the gentleman from Jefferson.

MR. PETTUS—I rise to a point of order. The motion for the previous question is not debatable.

THE PRESIDENT—The attention of the chair was diverted for a moment, and the chair possibly failed to recognize the gentleman from Jefferson. This was unintentional, and there was another matter in the mind of the chair about which he was conferring with several delegates.

MR. WHITE—I had not heard the chair call the name of the gentleman from Tuscaloosa, and I make the point that when my name was called and I was recognized, that I had the floor.

MR. FITTS — I understood that the gentleman never was recognized. I demanded the previous question upon the ordinance, and asked for a yea and nay vote in accordance with the Constitution of 1875.

THE PRESIDENT — The chair is in doubt for the reason there was another matter in the mind of the chair just at the time, and the chair was speaking to the gentleman from Talladega, and for that reason is not clear upon the subject. The chair will rule that the gentleman from Jefferson was entitled to the floor.

MR. FITTS—I call for the reading of the journal, and make a point of order that I was recognized by the chair.

MR. WHITE—I make the point of order that the chair has ruled upon the question.

MR. FITTS—I call for the reading of the stenographic report.

MR. WHITE—I make the point of order that the only way open to the gentleman is to appeal from the decision of the chair.

THE PRESIDENT—It seems to the chair that the gentleman from Jefferson was on the floor, and the chair cannot recollect whether he was recognized or not, but gentlemen in whom the chair has confidence, state that he was recognized, and it would not be proper in the opinion of the chair, for the gentleman to be deprived of the privilege of offering his amendment simply because the mind of the chair was detracted by another subject.

MR. FITTS—I make the motion, then, that we remain in session until this pending motion is disposed of.

MR. WHITE—I have the floor, as I understand it.

MR. FITTS—I insist upon my motion and call for a suspension of the rules.

THE PRESIDENT—The gentleman will send up his amendment, and the chair will submit the question of a suspension of the rules to the Convention.

Upon a vote being taken, the rules were suspended.

MR. FITTS:—I move that we remain in session until the pending matter is disposed of.

Upon a vote being taken, the vote was carried. The amendment offered by the gentleman from Jefferson (Mr. White) was read as follows: "Amend by striking out all of said ordinance after the words 'by law allowed.'"

MR. WHITE:—I am not quite sure that the amendment strikes out the exact words that I want stricken out or not, because I had to gather the substance of the ordinance by simply hearing it read rather hurriedly, the purpose of the amendment is to strike out that part which allows pay to the members of this Convention. The purpose of the amendment is to allow the officers of the Convention pay for their services, but not to allow the members of the Convention pay for their services. I do not know of anything that would commend itself so much to the people of Alabama as for the delegates of this Convention to show their patriotism upon this occasion. We all know that the members of this Convention, generally speaking, are sacrificing very much more than the per diem which they receive. The man who came to this Convention for the purpose of being compensated by the per diem which is allowed by law could hardly be of that type that would be to the best interest of the State to send. A very large majority of this Convention are losing every day much more than the per diem, and if we could convince the people of Alabama and convince them thoroughly of the fact that we are acting slowly from patriotic motives, it would go far indeed towards ratifying the work which we will submit to them, and I do hope that this amendment will be adopted.

MR. FITTS:—I do not think the people of this State desire to be fed on gush or bosh in respect to this matter. (Applause.) I do not suppose there is a delegate here, or there are very few indeed, to whom the compensation of four dollars per day amounts to anything more than furnishing the means of paying his expenses in attending this Convention. I do not believe that the gentleman from Jefferson speaks for the people of Alabama when he says that they have a desire that as representatives of the people these delegates should remain here without compensation. If he wants to play that role, Mr. President, he need not take his pay, but he can turn it over to an orphan asylum, or to any charity that he may desire, but I do not believe there is any yearning sentiment among the people of Alabama that they should pay the pages and the officers of this Convention and not pay the expenses of the delegates for devoting their best time and attention to framing this Constitution. They are willing—

MR. WILLIAMS (Marengo)—May I interrupt the gentleman?

MR. FITTS—No, sir.

MR. WILLIAMS (Marengo)—Just for a minute.

MR. FITTS—Not even for a minute. The people are perfectly willing that the laborer should be worthy of his hire here today as it was in olden times in the scriptural days, and I do not believe that the position of the delegate represents the true desire of the people of this State. I believe that they desire to bear the expenses of their representative, and desire that this work be thoroughly but expeditiously done, and that we should remain here and receive the compensation fixed by law. I move to lay the amendment upon the table.

MR. WHITE—I call for an aye and no vote.

The call was sustained, and the vote upon the call of the roll resulted as follows:

#### AYES

Messrs. President,	Glover,	Maxwell,
Almon,	Graham, of Montgomery,	Merrill,
Altman,	Grayson,	Miller (Wilcox),
Ashcraft,	Greer, of Calhoun,	Moody,
Banks,	Greer, of Perry,	Mulkey,
Barefield,	Handley,	Murphrey,
Bethune,	Harrison,	NeSmith,
Blackwell,	Heflin, of Chambers,	Norman,
Boone,	Heflin, of Randolph,	Oates,
Brooks,	Henderson,	O'Neal (Lauderdale),
Browne,	Hinson,	Opp,
Bulger,	Hodges,	O'Rear,
Cardon,	Hood,	Palmer,
Carmichael, of Colbert,	Howell,	Parker (Cullman),
Chapman,	Howze,	Parker (Elmore),
Coleman, of Greene,	Inge,	Pearce,
Cunningham,	Jackson,	Pettus,
Davis, of DeKalb,	Jenkins,	Pillans,
Davis, of Etowah,	Jones, of Bibb,	Pitts,
Dent,	Jones, of Wilcox,	Porter,
deGraffenreid,	Knight,	Proctor,
Duke,	Leigh,	Reese,
Eley,	Locklin,	Reynolds (Henry),
Eyster,	Lomax,	Rogers (Lowndes),
Espy,	Long (Butler),	Samford,
Ferguson,	Long (Walker),	Sanders,
Fitts,	Macdonald,	Sanford,
Fletcher,	McMillan (Baldwin),	Searcy,
Foshee,	McMillan (Wilcox),	Selheimer,
Freeman,	Malone,	Sentell,

Smith (Mobile),	Tayloe,	Williams (Elmore),
Smith, Mac. A.,	Vaughan,	Williams (Barbour),
Smith, Morgan M.,	Waddell,	Williams (Marengo),
Spears,	Walker,	Wilson (Clarke),
Sorrell,	Watts,	Wilson (Washington),
Stewart,	Weakley,	Winn.
Stoddard,	Whiteside,	

TOTAL—110

#### NOES

Beddow,	Jones, of Montgomery,	O'Neill (Jefferson).
Burns,	Kirk,	Robinson,
Cobb,	Kirkland,	Spragins,
Cofer,	Lowe (Jefferson),	White,

TOTAL—12

#### ABSENT OR NOT VOTING

Bartlett,	Gilmore,	Morrisette,
Beavers,	Graham, of Talladega,	Norwood,
Burnett,	Grant,	Phillips,
Byars,	Haley,	Renfro,
Carmichael, of Coffee,	Jones, of Hale,	Reynolds (Chilton).
Carnathon,	King,	Rogers (Sumter),
Case,	Kyle,	Sloan,
Coleman, of Walker,	Ledbetter,	Sollic,
Cornwall,	Lowe (Lawrence).	Thompson,
Craig,	Martin,	Weatherly,
Foster,	Miller (Marengo),	Willet.

By a vote of 119 ayes and 12 noes, the motion to table was carried.

During the call of the roll:

MR. SANFORD (Montgomery)—As Alabama is not begging for charity from this Convention, I vote aye.

MR. WILLIAMS (Marengo)—I move the adoption of the ordinance, and upon that I move the previous question.

MR. BROOKS—Before that motion is put I desire to move that when this Convention adjourns that it adjourn until 4 o'clock this afternoon.

Upon a vote being taken the vote was lost.

MR. HARRISON—I rise for an inquiry. This matter was submitted to the Judiciary Committee as I understood it to investigate the matter as to the power of this Convention to adopt an ordinance to do what this ordinance proposes. I understood the Chairman of the Committee to state that having ascertained that

the Attorney General had given an opinion upon this matter, the Committee did not investigate it, and the Committee expressed no opinion upon it, nor is the report of the Committee accompanied by the opinion of the Attorney General. I desire to inquire of the Chairman of the Committee if they investigated the matter, and if so what is their conclusion, and if they have not, and rely upon the Attorney General's opinion, if they will allow the Convention to have a copy of that opinion.

MR. BURNS—I move that we adjourn.

MR. FITTS—The previous question has been ordered.

MR. BURNS—A motion to adjourn is always in order.

THE PRESIDENT—The main question has been ordered. The question is upon the adoption of the ordinance reported by the Committee.

During the call of the roll:

MR. BURNS—In the absence of the opinion of the Attorney General I vote no. (Laughter.)

MR. JONES (Montgomery)—I ask unanimous consent for one minute to explain my vote. (There were loud expressions of dissent and objections.) I vote no, because this Convention has no authority to appropriate money.

The vote upon the call of the roll resulted as follows:

#### AYES

Messrs. President,	deGraffenreid,	Howell,
Almon,	Duke,	Howze,
Altman,	Eley,	Inge,
Ashcraft,	Eyster,	Jackson,
Banks,	Espy,	Jones, of Bibb,
Barefield,	Ferguson,	Jones, of Wilcox,
Bethune,	Fitts,	Knight,
Blackwell,	Fletcher,	Leigh,
Boone,	Foshee,	Locklin,
Brooks,	Freeman,	Lomax,
Browne,	Glover,	Long, of Butler,
Bulger,	Graham, of Montgomery,	Long, of Walker,
Cardon,	Grayson,	Lowe, of Jefferson,
Carmichael, of Colbert,	Greer, of Calhoun,	Macdonald,
Chapman,	Handley,	McMillan, of Baldwin,
Coleman, of Greene,	Heflin, of Chambers,	McMillan (Wilcox),
Cornwall,	Heflin, of Randolph,	Malone,
Cunningham,	Henderson,	Maxwell,
Davis, of DeKalb,	Hinson,	Merrill,
Davis, of Etowah,	Hodges,	Miller (Wilcox),
Dent,	Hood,	Moody,

Mulkey,	Reese,	Stoddard,
Murphree,	Reynolds, of Henry,	Tayloe,
Norman,	Rogers (Lowndes),	Vaughan,
Oates,	Samford,	Waddell,
O'Neal (Lauderdale),	Sanders,	Walker,
Opp,	Sanford,	Watts,
O'Rear,	Searcy,	Weakley,
Parker (Cullman),	Selheimer,	Whiteside,
Parker (Elmore),	Sentell,	Williams (Barbour),
Pearce,	Smith (Mobile),	Williams (Marengo),
Pettus,	Smith, Mac. A.,	Williams (Elmore),
Pillans,	Smith, Morgan M.,	Wilson (Clarke),
Pitts,	Sorrell,	Wilson (Washington),
Porter,	Spears,	Winn.
Proctor,	Stewart,	

TOTAL 108

### NOES

Beddow,	Jones, of Montgomery,	Sloan,
Burns,	Kirkland,	Spragins,
Cobb,	Kyle,	White,
Cofer,	Palmer,	
Harrison,	Robinson,	

TOTAL—13

### ABSENT OR NOT VOTING

Bartlett,	Graham, of Talladega,	Norwood,
Beavers,	Grant,	O'Neill, of Jefferson,
Burnett,	Haley,	Phillips,
Byars,	Jenkins,	<b>Renfro,</b>
Carmichael, of Colbert,	Jones, of Hale,	Reynolds (Chilton),
Carnathon,	Kirk,	Rogers (Sumter),
Case,	Ledbetter,	Sollie,
Coleman, of Walker,	Lowe, of Lawrence,	Thompson,
Craig,	Martin,	Weatherly,
Foster,	Miller (Marengo),	Willet.
Gilmore,	Morrisette,	

### PAIRS

NeSmith, aye; Kirk, no.

And by a vote of 108 ayes and 13 noes, the ordinance was adopted.

Leaves of absence were granted to Mr. Thompson of Bibb, for today and Saturday; Mr. Grayson for Saturday and Monday; Mr. Inge for Saturday and Monday; Mr. Reynolds of Chilton, for today; Mr. Howze for Saturday; Mr. Weatherly for today on account of sickness; Mr. Foster for today and tomorrow; Mr. Jones

of Bibb, for Saturday and Monday; Mr. Foshee for today and tomorrow evening.

Thereupon the Convention adjourned until 3:30 o'clock.

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#### AFTERNOON SESSION

The Convention was called to order by the President and the roll being called showed the presence of 109 delegates.

Leaves of absence were granted as follows: Mr. Haley for Saturday and Monday; to Mr. Cardun for this afternoon, on account of sickness; to Mr. Pearce until Thursday; to Mr. Davis of Etowah for tomorrow; to Mr. Heflin of Randolph for tomorrow.

MR. SAMFORD (Pike)—I ask unanimous consent to be permitted to present a petition, to have it printed in the stenographic report.

THE PRESIDENT—The gentleman asks unanimous consent to introduce a petition.

MR. KIRKLAND—I object.

THE PRESIDENT—Objection is made.

MR. SAMFORD—I move a suspension of the rules that I be permitted to have this short petition introduced. It has been universally accorded to every gentleman on this floor.

MR. KIRKLAND—I withdraw the objection.

The clerk then read the petition as follows:

Petition by Mr. Samford (Pike):

Troy, Ala., July 15, 1901.

To Hons. J. C. Henderson, J. D. Murphree and W. H. Samford, members Constitutional Convention:

We, the undersigned, respectfully petition through you the Constitutional Convention, to embody in the organic law plenary powers to the R. I. Commission, they to be elected by the people and paid by the State.

Alex Henderson & Co., W. C. Windham, J. O. Pinson, J. P. Wood, John Gamble, J. Randolph Brown, C. A. Simpson, F. Brantley & Sons, White & Edmondson, H. T. Babcock, T. J. Dillard, V. D. Jones, Rosenberg Bros., James Walters, Bob Flinn, Branner & Henderson, J. F. Paul, F. L. Enzor, T. S. Faulk, J. D. Murphree, Jr., Redden Bros., Charles Carroll, Charles Henderson, J. F. Carroll, N. J. Ross, B. B. Wilkerson, Coleman & White, Saul Parchten, Ben Rubenstein, Sellers, Miller & Co., Rainie Bros., W. A. Sims,



McLeod Darby, W. B. Johnson, B. M. Owens, J. M. Mullan, W. E. Hanchey, Charles C. Williams, I. Jackson, Sam A. Williams, J. R. Darby & Son, F. S. Wood, T. McBryde, J. S. Copeland, J. D. Williams.

Referred to Committee on Corporations.

MR. SANFORD (Montgomery)—What is the business before the Convention?

THE PRESIDENT—When the Convention adjourned, the gentleman from Tallapoosa had the floor. The special order for this afternoon is the consideration of the report of the Committee on Legislative Department. The Convention had under consideration Section 69 to which there was pending an amendment and substitute to the amendment and section. The Chair recognized the gentleman from Tallapoosa.

MR. BULGER—When we suspended in the forenoon, I was undertaking to give my views briefly on this section of the report of the committee as amended. It has been the experience of almost every Legislature in Alabama since the war that the most important and yet the most complicated propositions with which they have to contend is the framing and passing of a revenue bill. It is important because it is one of the ways by which the State government procures revenue with which to defray the expenses of the administration of the affairs of State. It is complicated because it necessarily embraces a large variety of enterprises that go on in every part of the State. Now, one way by which the State procures its revenue is by an ad valorem tax. This Convention in its wisdom has reduced the rate of taxation from seventy-five cents to sixty-five cents thereby reducing the revenue from that source about a quarter of a million dollars, making it important that every other source through which revenues must be obtained shall be carefully guarded by this Convention and by the House of Representatives of the State. Now, I submit that the average Representative who comes to the Legislature is not prepared to go into and ascertain the necessary information to intelligently draw a bill like this. He comes from the everyday avocations, he is not familiar with the affairs of State, and the ordinary man will take from thirty to sixty days to acquire this information and become familiar enough to draw a bill on this subject. Now, I understand the purpose of this section reported by the committee is to aid the Legislature in preparing this particular bill. Now, if a representative is to have information on any important subject like this, it is important that he have the best information obtainable. He is unable to get it from the people who send him here, he is hardly qualified to go into the Auditor's office, and into the Treasurer's office and get the information. Now, this bill proposes to relieve

him of this labor and put upon his desk when he comes here this information so that he cannot be mistaken about what it is. Now, this section proposes to have that information to come from the Chief Executive of the State, the man of all men who should be informed about the necessities and financial condition of the State. It also provides that he shall be accompanied by the Auditor whose business it is to keep the account of the State and be familiar with its condition. The Attorney General is not put upon this force for any such purpose, he is not expected to know any more about the financial condition of the State and its affairs than the ordinary representative. His business is in a different department. Now, when the revenue bill is prepared and passed it is important that it should be legal and constitutional, therefore, the committee acted wisely in putting the Attorney General on the Board. So you see that this combination of information to be laid upon the desk of every member of the House of Representatives early in the session makes him better prepared to vote upon a revenue bill when it is presented. Now, some gentlemen objected because they said it would put the Executive too nearly in touch with the House of Representatives. If this Constitution be adopted, that will not be the fact, because the out-going Governor, who has held his office for four years, the out-going Attorney-General and out-going Auditor must present this bill—this information. The Legislature who follow after him is accompanied by a new Governor. The old Governor makes the report and gives the information. The new Governor has nothing to do with that bill, except he may recommend in his message, and to veto or approve it. So you see the alarm of the gentlemen on the other side is unfounded. The Governor who makes this report to the Legislature has no more to do with the House of Representatives, his term is at an end, and they are left alone with a new Governor. Now, the amendment of the gentleman from Mobile is wise and conservative. He strikes out of the original section the word "action" and instead thereof puts the word "information" so the bill would read, "prepare a general revenue bill to be submitted to the Legislature for its information," instead of for its "action." Therefore, the Governor, as gentleman have said, does not introduce a bill into the Legislature. The further amendment by the distinguished gentleman from Mobile is this, "which the Governor shall transmit to the House of Representatives as soon as organized." Here is the amendment, "to be used or dealt with as the House may elect." So you see it is only at most a recommendation; it is only at most information transmitted from a source about which there can be no doubt. Now, it seems to me, gentlemen of the Convention, that there can be no objection to this. It seems to me that it would aid the House of Representatives wonderfully to have this information spread upon their desks early in the session.

THE PRESIDENT—The time of the gentleman has expired.

MR. SANFORD (Montgomery)—I hope, Mr. President, that this 29th section will not pass. It is a departure from the customs of Alabama; it is an innovation upon its time-honored policies, and it is more—it is a retrogression; it is going back to the very principles from which our forefathers revolted more than one hundred years ago. They were greatly disturbed by the influence which the executive officers had over the Legislature, especially in the matter of taxes. Now, the question of taxation has been the cause of more revolutions than any one single cause in the history of the world, not only in England, but in Europe, and not only in Europe and England, but in our own country. Your great Revolution of 1775 was fought on the question of taxation. I said, Mr. Chairman, that this is a matter of retrogression—it is precisely the policy of a monarchy; it is precisely the policy of Great Britain as it exists today. At the commencement of every Parliament the Chancellor of the Exchequer, under the influence of the administration, prepares what is called his budget. His budget consists of two distinct departments. One is the statement of the financial condition of Great Britain, and the other is what he calls his scheme or method to meet that condition, and the scheme consists of repealing subjects of taxation, or of adding new items, or of suggesting alone. Now, what is this but precisely the English budget, the monarchical plan of raising revenue and restrictions proposed by this section. Monarchies have one system of policy; Republics another—and this system is a mingling, is a mixture, of monarchical government and republican government, and, like all unnatural mixtures, a governmental hybrid will be produced that will have the evils of both and the virtues of neither. I can see no reason why we should adopt the English system in Alabama—one being the system of a monarchy and the other that of a great republic. What would our friend Sowell, my friend the Auditor, think if he was to play the part of Chancellor of the Exchequer, under the direction of the administration—for that is precisely the position that he would hold. The Chancellor of the Exchequer of England is the Auditor. He states the financial condition, and then he proposes certain subjects of taxation and recommends them to the House of Parliament, where the bill originates, and to the House of Lords. Now, this is precisely the same thing, and I don't think that our people would like the monarchical policy of being taxed applied to them. For these reasons, and the incongruity and inconsistency between the policies of a republic and a monarchy, limited or otherwise—in a republic the voice of the people should be heard. My friends forget that this whole idea of originating revenue bills, with the Commons, is really nothing more than a development. Originally, as you know, in England, there was no such thing as a Parliament

being elected for the purpose of making laws. The people were instructed to send up Burgesses and Knights from counties and boroughs for the purpose of doing what? Simply to report how much their communities could contribute to the Government under which they lived. Sometimes their aversion to going to Parliament was so great that they were fined. I remember, one instance of a Burgess being fined a yoke of oxen because he declined to go to Parliament after he had been designated for that purpose. I mention that simply to show that the origin of this whole idea of taxation originating in the House of Representatives in every State in the Union, in Congress itself, and in England, really comes from the exactions of the King to bring these men up to report what they could contribute. That is the origin of the whole system. This English system, as I say, has existed for hundreds of years and is called the budget. For instance, Robert Peel's budget, when he introduced an income tax in 1842, and on repealing the Corn Laws in 1846, or in reducing the wine duties in 1860, all these are budgets—and this is nothing but reporting the budget as reported by England, and they will get together and tell you that the condition of finances in Alabama is so and so, and we recommend by this bill—we call it "information"—that these items shall be taxed at certain per cents in order to raise the requisite revenue to carry on the government. Inasmuch as I am opposed to monarchical forms of government, Mr. President, in all shapes and forms, I hope this particular Section will not be passed.

MR. KIRKLAND—I move the previous question on the original Section and amendment.

MR. BROOKS—I hope the gentleman will withdraw that until the author of the amendment can be heard.

The delegate declined to withdraw.

MR. HEFLIN (Chambers)—I make the point of order that the author of the amendment has a right to be heard.

MR. deGRAFFENREID—It has been the uniform ruling of the Chair when previous question has been ordered on the Section and amendment, that the Chairman having the Article in charge should be heard.

MR. BOONE—The author is perfectly willing for the Chairman to rule.

THE PRESIDENT PRO TEM—The question is shall the main question now be put?

Upon a vote being taken the main question was ordered.

THE PRESIDENT PRO TEM—I recognize the Chairman of the Committee.

MR. OATES—Mr. President, I have listened to the debate, especially the speeches in opposition to this Section on yesterday evening until, if I had not known what it was, I should have felt very much startled, and felt it was time to be looking for the mob or armed force to kill any man who undertook to be Governor, if this was put in operation, because it was alleged that it destroyed our liberties, it was absolutely assumed and argued that the Governor could make this estimate and send in this bill, and it was not within the power of any member of the Legislature to change it, and he could with his veto sitting back there compel the passage of the bill that he submitted. A most monstrous proposition when there was not a line or word that authorized any such assertions.

I was not so much astonished at the wild speech made by my friend, the delegate from Walker, as I was when my learned friend and colleague from Montgomery, an astute lawyer, Mr. Lomax, went off on the same line, and now, sir, another one of my colleagues who is a very learned gentleman, has seen another bugaboo in it, and that is that we have gone back to the English system. Not quite, sir, not quite! There the bills are sent in and the Cabinet officers have a seat in the House of Parliament, as I have had the honor of seeing and observing myself. He is the leader and explains everything, and the debates are had in that way, comes from the Government, and no other measure is tolerated to displace it at all. Now, sir, I don't think experience is worth very much to the delegates to this Convention, judging by their records, they all seem to think for themselves and go whichever way they are convinced is right without regard to any road that man has traveled heretofore, or any knowledge he has gained thereby. Now, I have had a little knowledge on this very question, which I will at the risk of being considered uninteresting and tedious, state to the Convention.

MR. O'NEAL—May I ask the gentleman a question.

MR. OATES—Certainly.

MR. O'NEAL—I was going to ask you this question. You speak of Parliament. Isn't it a fact that the Chancellor of the Exchequer may be a member of Parliament and have the right to submit their Budgets to Parliament?

MR. OATES—Certainly they have, and the Government has precedence over everything else.

MR. O'NEAL—If it is such a good thing for the Government to prepare the revenue bill, why not prepare bills on all subject of general legislation?

MR. OATES—That is not done.

MR. O'NEAL—That is the principle on which you bill is based.

MR. OATES—If you will not interrupt with any more questions I will get along and will meet that argument. I had the honor once of being a member of the Legislature in this House in 1870, when we were practically under carpet-bag government. That was about the time that we emerged, and in the Senate, I remember distinctly, they were all of the other party except two Democrats. There were two Democratic Senators in there. I was made Chairman of the Ways and Means Committee. When we had to deal with the acts of 1868, and more of them that were obnoxious to our people, there was no limit then to the term of the Legislature, there was no limit to taxation, and the terms of the Legislature were annual. I held that position and labored here in 1870-71, and 1871-72, and I do know something about the difficulty of framing a revenue bill. Prior to that time, I had never had any such experience and I found myself utterly and entirely at a loss as to what I should do, there was no information practically from the Governor, who was Smith at that time, Lindsey succeeding him during the session. There was no information upon which we could proceed, and I remember how long and how tedious were the labors of that Committee, when they were trying to get up and finally succeeded in getting up an imperfect revenue bill. Since that time they have had much less difficulty. Times have improved, and legislation has been much less troublesome to deal with than it was then, and still you take even the last Legislature, and we have heard from one of the delegates on this floor, the great trouble they had in getting up the revenue bill, and got up a very defective one at last. Now what is this Section? What does it require? Some say, Oh, well, you are going to give the Governor dictatorial power, he and the Auditor will just run things as they please. Well, now you find in Section 24 of the Executive Department where the Treasurer, the Auditor and Attorney General shall perform such duties as are prescribed by law, and the Treasurer and Auditor shall, every year, at a time the General Assembly may fix, make a full and complete report to the Governor showing all receipts and disbursements of every character, of claims audited and paid by the State by items, and all taxes and revenue collected and paid into the Treasury from what sources, and they shall make reports on any matter pertaining to their office if required to do so by the Governor or the General Assembly. The Auditor who has the best opportunity, the best information on the subject of the amount of income and expenditures to make a report and every particular and detail reported to the governor of what the revenue will be, and what will be the necessities of the government, and what are the probable expenditures, so as to enable the Governor in his message to lay these facts before the Legislature. Then Section 11, the Executive Department, "The Governor shall from time to time give to the General Assembly information of the state of the government and recommend to their consideration such

measures as he may deem expedient, and at the commencement of each session of the General Assembly and at the close of his term of office give information by written message of the term of his State, and he shall account to the General Assembly as may be prescribed by law for all monies received and paid out by him from and funds subject to his orders, with the vouchers therefor" and also this "and he shall at the commencement of the regular session present to the General Assembly estimates of the amount of money required to be raised by taxation for all purposes. Now, sir, that involves complete information on his part with everything. Of course, if there should be income from other sources then that might be imposed. Now, is there any fear of any enlargement of this power?

MR. LONG (Walker)—I see here in Section 29 the Governor is required to prepare a bill and transmit the same to the House of Representatives, a general revenue bill, and members of the House, you say, would have the right to amend it. I don't think a member would. If he should offer an amendment would he not be in the attitude of fighting the administration?

MR. OATES—Not at all. The member might lay it on his desk. That has nothing to do with it.

MR. LONG—The gentleman did not answer the question. Would he not be in the attitude of fighting the administration?

MR. OATES—No, he would not be doing anything of the kind, not at all, and we have never had any Governor big enough fool to suppose such a thing, and I hope we never will have.

THE PRESIDENT PRO TEM.—The gentleman's time has expired. The question recurs on the amendment of the gentleman from Mobile.

MR. OATES—Mr. President, I think the Chair is mistaken.

MR. BULGER—I rise to a point of order. Does not the Chairman of the committee have thirty minutes instead of ten minutes.

MR. OATES—It is only on amendments that they are limited to ten minutes.

MR. BULGER—I understand the rule to be under the amendment is only ten minutes, but the previous question being ordered the chairman has thirty minutes.

THE PRESIDENT PRO TEM.—The recollection of the Chair is, and would like to be informed, that a recent rule was adopted limiting all debate.

MR. OATES—Only to the amendment.

THE PRESIDENT PRO TEM. —The point of order is well taken and the chairman of the committee will proceed.

MR. OATES—I will not consume more time than I deem absolutely necessary, and necessary only to put the delegates in full possession of the views of your committee, and I think the correct view of this proposition. Now, sir, the only object and purpose of it was this. Inasmuch as the Auditor is the main State officer to give the Governor such information in regard to the financial condition of the State as will enable him to make proper communication to the Legislature he is named, but it is upon the Governor, who has to communicate to the Legislature the condition of the finances, and it is right and it is the custom in that communication for the Governor to make whatever he deems to be suitable recommendations to the Legislature for legislative measures. My friend from Walker is apprehensive that it would be construed into fighting the Governor. A member of the Legislature, if he sees proper, he will agree with the recommendations of the Governor, but he is not in hostility to the Governor in differing from him in his views. Now, inasmuch as it is incumbent upon the Governor to lay before the Legislature the necessary information about the State and condition of the finances, your committee thought it was advisable, and would be a proper economy of time.

MR. LONG (Walker)—May I ask a question?

MR. OATES—I must decline to be interrupted. It is pretty bad to be broken up, to have one's line of argument broken into. I do not object to answering questions, and I will do so before I sit down. It was deemed entirely proper and really saving time for the Governor who has to look into these matters and inform himself so that he may make proper communications to the Legislature, and particularly inform himself of the financial conditions. Nobody could object to this, except it is an imposition of additional labor to him. It is simply imposing additional labor upon the Governor and the officers of his cabinet associated with him. As has been properly stated, and the delegate from Tallapoosa is the only man I have heard speak on this subject, who seems to have a perfectly correct conception of what it meant and what it provided for. The Attorney General is associated so he can investigate the legal questions. In framing the bill on different points always arising, constructions of revenue measures and the Auditor furnishing the information and aiding the Governor in getting at these facts, and when they send in the bill printed it is nothing in the world except a suggestion to the House of Representatives and when a committee is appointed having charge of matters of revenue they take this bill, and I submit to any man of common sense if it would not aid him in investigating to see what ought to be done, what should be recommended to the Legislature as revenue mea-



asures? Not bound to take anything that is recommended, nothing at all in the bill if they don't see proper to do so and that was the way that the bill read. There are some criticism upon the word "action" by the Legislature. Why you would read the whole instrument to find out what the words mean in it. The substitute that has been offered and is now pending I have no objection to. I am very willing to accept it for it does not change the sense at all, it changes that word from "action or" to "information" and makes the section so plain that even a child, a school boy, can read it and not be mistaken about what it means. "All bills for raising revenue shall originate in the House of Representatives." That is old. "But the Governor, Auditor, Treasurer and Attorney General shall before each regular session of the legislature prepare a general revenue bill to be submitted to the legislature for its action and the Secretary of State shall have printed for the use of the legislature a sufficient number of copies of the bill so prepared which the Governor shall transmit to the House of Representatives as soon as organized, to be used or dealt with as the House may elect." Throw it upon the table if they want to, or out of the window, yet some gentlemen are fearfully afraid of it, they fear there is something wonderful in it, that in this thing the Governor will be a king with absolute power. Then the following: "The Senate may propose amendments to revenue bills." That is an old provision, has had place in the Constitution all the time. The following is new: "No revenue bill shall be passed within the last five days of the session." That is to give the Governor time to look over it and examine it carefully. The Governor may veto any item in it and that item can be considered by the General Assembly while the balance of it remains good. I do not wish to talk just to hear my own voice. I never was charmed enough with it. I think I have gone over it and said all that is necessary. I am ready to answer the question of the gentleman from Walker.

MR. LONG—The gentleman has changed his argument so much that the question I wanted to ask would not do any good.

MR. OATES—Ah, changed my argument so much—I had not made one before. Mr. President, the substitute offered by the gentleman from Mobile is acceptable to me. I have no right to accept it for the Committee, but it is acceptable to me and I hope it will be adopted.

PRESIDENT PRO TEM—The question recurs upon the amendment offered by the gentleman from Mobile to the amendment of the gentleman from Dallas to Section 29.

MR. VAUGHAN—I move to lay the substitute offered by the gentleman from Mobile on the table, and I call for the ayes and noes on that.

MR. BOONE—I ask that the substitute be read to the Convention. I raise the point of order that the previous question has already been ordered, and it is too late to make a motion to lay upon the table after the previous question on the section and amendments have been ordered.

THE PRESIDENT PRO TEM—The point of order is overruled. Ayes and noes are demanded. Upon a motion to lay upon the table the amendment to the amendment offered by the gentleman from Mobile. Is the call sustained?

Upon a vote being taken, the call was sustained.

THE PRESIDENT PRO TEM—The ayes and noes are demanded, and the question recurs on the motion of the gentleman from Dallas to lay upon the table.

MR. WILLIAMS (Marengo)—The rule of the Chair has been heretofore on a call for the previous question that a motion to table has precedence but after the call has actually been ordered by the House it is too late.

MR. O'NEAL—The rules do not say that.

MR. WILLIAMS—That has been the ruling of the Chair.

MR. OATES—I think the temporary Chairman has a right to rule for himself.

MR. O'NEAL—It makes no difference what the rules are. The question is, what is right?

The President here read Rule 25.

Under this rule, the Chair feels constrained to rule that the motion to lay upon the table has precedence.

MR. DUKE—I would like you to read Rule 26, which is as follows: "A motion to adjourn shall always be in order, even in the absence of a quorum, except when on the call for the previous question, the main question shall have been ordered, or when the Chair is stating a question or when the roll is being called, or has been called, the vote has not been announced, or when a vote is being verified or when a member has the floor and such motion shall be decided without debate." A motion to adjourn at this stage would not be in order, and yet it has precedence over a motion to lay on the table. A motion to adjourn now would not be in order, it having the preference over a motion to lay on the table. How would a motion to lay on the table have preference over a motion after the previous question has been called.

MR. O'NEAL—I make the point of order that the Chair has ruled on the question and further debate is out of order.

PRESIDENT PRO TEM—The Chair would like to be right. I take a moment to consider this.

MR. DUKE—I will call the attention of the President to Rule 17, which, in my opinion states the question. It says: "The previous question shall be in the following form: 'Shall the main question be now put?' If demanded by a vote of the majority of the delegates present, its effect shall be to cut off all debate and bring the Convention to a direct vote."

PRESIDENT PRO TEM—The Chair sustains the point of order and the question is on the adoption of the amendment of the gentleman from Dallas to Section 29.

MR. BOONE—I ask that the amendment be read.

MR. LOMAX—I ask that the original amendment be also read.

The Clerk read the amendment of Mr. Vaughan as follows: "All bills for raising revenues shall originate in the House of Representatives, but the Senate may propose amendments as in other bills."

Substitute by Mr. Boone: "All bills for raising revenues shall originate in the House of Representatives, the Governor, Auditor, and Attorney-General shall, before each regular session of the Legislature, prepare a general revenue bill, to be submitted to the Legislature for its information, and the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill so prepared, which the Governor shall transmit to the House of Representatives as soon as organized, to be used or dealt with as the House may elect. The Senate may propose amendments as in other bills."

PRESIDENT PRO TEM—The words "no appropriations" have been stricken out by consent. The question is upon the motion to lay upon the table.

MR. O'NEAL—I call for the ayes and noes.

The call for the ayes and noes was sustained.

THE PRESIDENT PRO TEM—The question is upon the adoption of the amendment proposed by the gentleman from Mobile. As many as favor its adoption will say aye and those opposed no as their names are called.

MR. PILLANS—I rise to a question of parliamentary inquiry. As the clerk read this I understood him to say that by unanimous consent "no appropriations" were the words stricken out. It should be "appropriations or."

**THE PRESIDENT PRO TEM**—For the information of the gentleman from Mobile, it is as indicated by him.

### AYES.

Altman,	Greer, of Perry,	Norwood,
Ashcraft,	Haley,	Oates,
Beddow,	Handley,	O'Neal (Lauderdale).
Boone,	Harrison,	O'Neill (Jefferson),
Bulger,	Heflin, of Chambers,	Opp,
Burnett,	Hood,	O'Rear,
Burns,	Howell,	Palmer,
Chapman,	Howze,	Parker (Cullman),
Cofer,	Inge,	Parker (Elmore),
Cornwall,	Jenkins,	Pearce,
Craig,	Jones, of Bibb,	Pillans,
Davis, of Etowah,	Jones, of Hale,	Pitts,
Dent,	Jones, of Wilcox,	Reynolds (Henry).
deGraffenreid,	Kirkland,	Robinson,
Duke,	Knight,	Searcy,
Eley,	Kyle,	Sentell,
Eyster,	Long (Butler),	Smith, Mac. A.,
Espy,	Macdonald,	Smith, Morgan M.,
Ferguson,	McMillan (Baldwin),	Spragins,
Fletcher,	Malone,	Tayloe,
Glover,	Maxwell,	Walker,
Graham, of Montgomery,	Miller (Wilcox),	Williams (Barbour),
Graham, of Talladega,	Murphree,	Williams (Marengo),
Grayson,	NeSmith,	Wilson (Clarke),
Greer, of Calhoun,	Norman,	Winn,

Total—75.

### NOES.

Almon,	Leigh,	Sanford,
Banks,	Lomax,	Selheimer,
Barefield,	Long (Walker),	Sloan,
Blackwell,	Lowe (Jefferson),	Smith (Mobile),
Brooks,	McMillan (Wilcox),	Spears,
Carmichael, of Colbert,	Martin,	Stewart,
Cobb,	Merrill,	Studdard,
Cunningham,	Moody,	Vaughan,
Davis, of DeKalb,	Pettus,	Weakley,
Heflin, of Randolph,	Porter,	White,
Henderson,	Proctor,	Whiteside,
Hodges,	Rogers (Lowndes),	Willet,
Jones, of Montgomery,	Samford,	Wilson (Wash'gton),
Kirk,	Sanders,	

Total—41.

## ABSENT OR NOT VOTING.

Messrs. President,	Foshee,	Mulkey,
Bartlett,	Foster,	Phillips,
Beavers,	Freeman,	Reese,
Bethune,	Gilmore,	Renfro,
Browne,	Grant,	Reynolds (Chilton),
Byars,	Hinson,	Rogers (Sumter),
Cardon,	Jackson,	Sollie,
Carmichael, of Coffee,	King,	Sorrell,
Carnathan,	Ledbetter,	Thompson,
Case,	Locklin,	Waddell,
Coleman, of Greene,	Lowe (Lawrence),	Watts,
Coleman, of Walker,	Miller (Marengo),	Weatherly,
Fitts,	Morrisette,	Williams (Elmore).

And by a vote of 72 ayes and 42 noes, the substitute was adopted.

MR. O'NEAL—I change my vote from no to aye for the purpose of moving a reconsideration tomorrow morning.

MR. WILLIAMS (Marengo)—I now move to reconsider the vote just taken whereby that amendment was passed. For the purpose of moving a reconsideration, I move to suspend the rules in order that that motion may be put upon its passage.

MR. O'NEAL—Upon that motion I call for an aye and no vote.

MR. WILLIAMS (Marengo)—I move to suspend the rules for the purpose of acting upon this motion to reconsider the vote whereby this amendment was adopted.

MR. O'NEAL—If you want to gag us and keep us from pressing the matter tomorrow, we will give you all the trouble we can.

The call for the ayes and noes was sustained.

A vote being taken and a division called for, and by a vote of ayes 59, noes 39, the Convention refused to suspend the rules.

MR. O'NEAL—You cannot gag us all the time.

The question recurring upon the amendment as amended, a vote being taken, it was adopted, and upon a further vote, Section 29 as amended was adopted.

MR. LOMAX—I rise to a point of order. A motion to reconsider the vote by which the substitute was adopted having been made to be considered tomorrow morning, it was not in order to vote either upon the substitute or the original section.

MR. deGRAFFENREID—The point of order comes too late.

MR. WILSON (Clarke)—I desire to direct the chair's attention to the last section and Rule 27. A motion to reconsider is subsidiary or an incidental motion, and does not go over until tomorrow, but should be considered forthwith. An amendment to the section is merely a subsidiary motion.

MR. BULGER—I rise to a point of order.

MR. O'NEAL—That is not an incidental motion.

MR. LOMAX—I submit I made a point of order before the point of order made by the gentleman from Clarke, that you cannot make a point of order on a point of order, and his point of order, even if it could be entertained is not germane to the proposition submitted by me, and therefore I am entitled to a ruling upon my point of order. This action should not have been taken, because of a motion to reconsider has been given.

MR. O'NEAL—I desire to call the attention of the chair to what constitutes an incidental question. Incidental questions are such as arise out of other questions and consequently are to be considered before the questions which give rise to them. Of this nature, first, are questions of order; second, motion for reading of papers; third, leave to withdraw a motion; fourth, suspension of a rule, and fifth, the amendment of an amendment. Now, this was not an amendment of an amendment but a substitute. It was a substitute for the original section.

MR. OATES—The point of order is not correct anyway, without regard to the time at which the point of order was made, a point of order is where notice has been given on the adoption of an amendment, and it applies to everything in regard to that section. That cannot be true. It would put it in the power of any man at any stage, to give notice that any such amendment had been adopted and to move the previous question, move to reconsider, and it would unfortunately disturb business. That is not the correct rule at all with regard to the matter. I have no objection to his having the motion to a reconsideration on tomorrow or at any time the session deems proper, but that is not the correct one to go on to perfect the section and the motion to reconsider reaches the whole thing whenever it is made, but a notice of a motion to reconsider now does not stop the consideration of this section at all.

MR. LOMAX—In view of the remarks of the chairman of the committee, I would like to be heard on my point of order. The rules are upon notice being given of a motion to reconsider, that that motion shall be considered in the morning hour of the next day; that is, the rule of this Convention now, then, the Convention refused to suspend the rules in order to entertain that motion just a moment ago, so under our rules it is impossible for a motion to

reconsider to be considered until tomorrow morning. That motion to reconsider was made upon the adoption of the substitute of the gentleman from Mobile, for the substitute of the gentleman from Dallas, to the original section. Now, if the Convention goes on, notwithstanding the motion to reconsider has been given, and adopts a substitute, then adopts the substitute as substituted, and then adopts the original section, I submit that action necessarily cuts off the power of this Convention to consider on tomorrow morning a motion to reconsider, of which notice has been given. So that if that be true, the notice of a motion to reconsider is absolutely useless and has no effect. So I do not think that a very proper course for the Convention to pursue when a notice of a motion to reconsider has been given and the House has refused to suspend its rules to consider that motion, to reconsider is to suspend action upon the section upon which that amendment is pending until the time at which that motion to reconsider can be heard. There can be no other fair or just or equitable rule in this body if the rules stand as they are written. I submit that the other votes ought not to be taken until the question of reconsideration has been determined.

MR. JONES (Montgomery)—I would like to ask the gentleman from Montgomery a question. Suppose this Section is adopted and we reconsider the amendment tomorrow. What would be accomplished by it?

MR. LOMAX—We have no right to consider it if it is adopted; if the Section is adopted, we have no right to consider any amendment to that Section nor the motion to reconsider the vote by which it was adopted. It is merely a perfunctory performance.

MR. REESE—Suppose some man gave notice on every amendment that was lost here during the whole day. Would the Convention have to stop its work and could not adopt a single Section because a notice has been given that the same amendment would be reconsidered?

MR. LOMAX—No, sir, it would not, because the Convention would then very properly suspend the rules and consider motions to reconsider and not have that sort of business to interfere with the Convention.

MR. MACDONALD—I rise to a question of parliamentary inquiry.

THE PRESIDENT—The Chair will entertain it, if it is in the nature of a suggestion.

MR. MACDONALD—It is in the nature of a suggestion. I was under the impression this Section has been submitted and adopted by a vote before Mr. Lomax ever raised his point of order at all.

THE PRESIDENT—The Chair is of the opinion that the point of order of the delegate from Montgomery is to a certain extent well taken and had the attention of the Chair been called to it before the other questions were put, he would have sustained it, but the Chair is also of the opinion that this is a subsidiary or incidental question and that the motion to reconsider ought to have been put without the suspension of the rules under Rule 27 so as to prevent the Convention from being delayed. The Chair's attention was not called to it, or it would have sustained it then, and therefore in order to correct the error as far as practicable, the Chair will rescind the action and entertain a motion to reconsider now.

MR. WILLIAMS (Marengo)—I move to reconsider.

MR. BULGER—I move to lay the motion on the table.

MR. O'NEAL—I rise to a point of parliamentary inquiry. I voted for the original Section as amended with the intention tomorrow morning of moving for a reconsideration. I give notice now I will move to reconsider the Section as amended.

THE PRESIDENT—The question being raised, in order to correct it, there was no point made. As soon as the Chair's attention was called to it and the question to reconsider was made by the delegate from Marengo, the matter should have been considered then.

MR. WILLIAMS—I now renew that motion.

MR. BULGER—I move to lay that motion on the table.

MR. SANFORD (Pike)—I rise to a point of order. It is no longer a subsidiary motion, but it has been adopted as a Section. It is no longer a subsidiary motion and cannot be considered as such and the only way it can be considered is as an original Section.

MR. O'NEAL—And under the rules it cannot be considered until tomorrow morning, and I give notice again that I will move tomorrow morning to reconsider the Section as adopted.

MR. WILLIAMS—Just one word on that. It strikes me the motion of the gentleman from Lauderdale is out of order. If the position of the delegate from Montgomery, Mr. Lomax, is correct then this motion to reconsider under the rules of the Chair, should come up at this time and may be properly laid on the table on the motion of the delegate from Tallapoosa.

THE PRESIDENT—It would not cut off a motion, the Chair would say, to reconsider the whole Section. The Chair regards it as an incidental or subsidiary question which should have been considered then.



MR. GREER (Calhoun)—I suppose the House fell into an error by virtue of an error in the ruling of the Chair, therefore, the Chair has the right to correct the error and ought to do it.

MR. LOMAX—I desire to say that the gentleman from Marengo credits me with the point of order made by the gentleman from Pike, Mr. Samford. I desire to correct him.

MR. SAMFORD (Pike)—I suggest to the Chair that after an amendment has been adopted by the House and then adopted as an original Section, it is too late for the Chair to correct any errors by doing a useless thing, and having a reconsideration of an amendment that is then incorporated in the Constitution.

THE PRESIDENT—The point of order is well taken and the Secretary will read the next Section.

Section 30 was read by the Secretary:

Sec. 30. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the Executive, Legislative and Judicial Departments of the State, interest on the debt and for the public schools. The salary of no officer or employe shall be increased in such bills, nor shall any appropriation be made for any officer or employe unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, and each embracing but one subject.

MR. LONG (Walker)—I ask unanimous consent to offer a short resolution.

The Secretary started to read the resolution.

MR. JONES—I would like to know how that resolution got in. The rules have not been suspended.

PRESIDENT—There was no objection.

MR. JONES—I was objecting all of the time.

MR. O'NEAL—I rise to a point of order. The objection comes too late.

PRESIDENT—The Chair did not hear it, but several of the gentlemen say they did object, and the Chair will put the question again.

MR. O'NEAL—I move that the rules be suspended and that the gentleman from Walker be allowed to offer the resolution now.

A DELEGATE—I move to suspend the rules that the delegate from Walker may have leave to offer his resolution. The question is on suspension of rules.

MR. HEFLIN (Chambers)—I make the point of order that the Chair said unless objection is made the resolution may be sent up, and the Chair hears none, and the gentleman will send up the resolution.

THE PRESIDENT—The Chair will state for the benefit of the delegate from Walker, he so announced that the point of order was well taken, but several delegates said they had made objections and in deference to the wishes of the Convention, the Chair would put it over. The question is on the motion to suspend the rules.

The motion was carried and the rules were suspended.

The Clerk then read the resolution offered by Mr. Long of Walker, as follows: "Whereas, a wave of patriotism has taken a rabid hold upon some of the members of this Convention to such an extent as to wound their consciences by being required to draw their per diem, and whereas, this Convention has no intention of infringing upon the right of any delegate. Therefore, be it resolved, by the people of Alabama in Convention assembled, That the Secretary be and he is hereby required to secure a blank book to be used only by the members who desire no pay, which fact shall be determined by the member signing his name therein said book, to be kept open for signatures of volunteer members at all hours, and the Secretary shall witness each signature under the proper date, and no member shall be allowed any pay from the State thereafter.

Provided, that the hotels, restaurants, boarding houses and saloons of Montgomery be and they are hereby required to furnish free of charge, board, lodging, laundry, liquors and cigars to such members as voluntarily surrender their pay. Because the Good Book says: "The laborer is worthy of his hire and the ass shall not be muzzled." (Prolonged laughter.)

MR. LONG (Walker)—I ask that the resolution be referred to Mr. White.

MR. COBB—I desire to be heard on that resolution.

MR. HEFLIN (Chambers)—I call for the regular order.

MR. REESE—I move that the gentleman be granted leave to be heard.

Unanimous consent was given.

MR. COBB—I do not allow any human being to question my Democracy. I believe I am just as good a Democrat as any man on the floor. Well, I am, with the exception of my friend from Chambers over there, possibly, and maybe my friend from Jefferson. Being a good Democrat, I am a friend of the people.

MR. KIRKLAND—I rise to a point of parliamentary inquiry. What is before this House?

MR. COBB—I am.

MR. O'NEAL—I move that the Clerk be requested to furnish a copy to the gentleman of what is before the House, in writing.

MR. KIRKLAND—Maybe you had better do it.

MR. COBB—Being a good Democrat, I am a good friend of the people—as good perhaps, as anybody on the floor, except, it may be my friend from Jefferson over yonder and my distinguished friend from Walker.

MR. LONG (Walker)—I ask unanimous consent to withdraw the resolution. (Laughter.)

Objection is made.

THE PRESIDENT—The delegate will remember that by unanimous consent the delegate from Macon has been accorded the floor. The Chair asks that the delegates keep in order.

MR. COBB—It is very well understood by the delegates upon this floor that my distinguished friend from Walker has a pre-emption right—a standing right—to speak to the people upon the floor of this Convention, but recognizing that right, I say that I am a friend of the people, and I am a good Democrat. Now, the cardinal rule of the Democracy has always been, as I have understood, the prompt and cheerful obedience to the will of the majority. Now the majority has acted; they have said to me that as a good Democrat and as a good friend of the people, I am in conscience bound to take this pay that they have voted upon me this morning, and in strict obedience to my life-long Democracy, I expect to take it. But I want to say that I always bow to the will of the majority without any mental reservation or secret evasion whatever and without any grumbling about it and I do not think that my friend from Walker or anybody else has got a right after forcing me into this position to come here—

MR. LONG (Walker)—There is nothing in my resolution requiring a man to accept pay or refuse his pay. It is voluntary.

MR. COBB—Yes, but you voted it on me this morning and said I should have it and said that I should take it and you have no right to go back on that. I raise a point of order. You cannot give and take away in the same breath. It is out of order. It is unparliamentary; it is not in accordance with the rules of this House, and therefore, I say that the gentleman cannot put me in the attitude of being undemocratic or not a friend of the people.

MR. LOMAX—I move that the resolution of the gentleman from Walker be referred to a special committee composed of gentlemen from Walker and gentlemen from Macon.

MR. GREER (Calhoun)—I rise to a point of order. The resolution has already been referred.

THE PRESIDENT—The point is well taken.

The Secretary read Section 30 as follows:

Sec. 30. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the Executive, Legislative and Judicial Departments of the State, interest on the public debt, and for the public schools. The salary of no officer or employee shall be increased in such bill, nor shall any appropriation be made for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bill, and each embracing but one subject.

Sec. 31. No money shall be paid out of the Treasury except upon appropriation made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

MR. OATES—That is substantially the provision in the present Constitution. The only change is that no officers salary shall be increased on the appropriation bill. I move its adoption.

MR. LOWE (Jefferson)—Section 30, second line, refers to ordinary expenses. I hardly know what might be termed ordinary expenses. I think the tendency is to narrow or limit the legislature in that respect and for that reason, without further discussion on the question, I desire to send up an amendment.

The Secretary read the amendment to Section 30, to strike out the word "ordinary" where it appears in the second line of said Section.

MR. OATES—That is an innovation upon the section as found in the existing Constitution and I therefore move to table the amendment.

Motion to table the amendment was carried.

MR. JENKINS—In a general appropriation bill, we have included the Montevallo school, and I wish to know the Chairman's opinion if the appropriation made to the Montevallo school, or the University, is affected by that section.

MR. OATES—This Section in that respect is not changed from the way it has been all the time.

MR. JENKINS—I know we have been doing it all the time, but the point I make is, haven't we been doing it wrong, and ought we not to put it in there?

MR. OATES—I don't know whether I have the floor or whether he has it.

MR. JENKINS—I yield.

MR. OATES I think it in order that the amendment be read.

The Secretary read the amendment as follows: "To amend Section 30 by adding after the word "debt" in the third line the following "appropriation for the State University, Alabama Polytechnic Institute, and Industrial school for white girls at Montevallo.

MR. OATES—All of that is wholly unnecessary and I move to lay the amendment on the table.

MR. LOMAX—Will the Chairman of the Committee permit me a question. Does the section as it stands, include those appropriations.

MR. OATES—The section, as it stands is as it has been all the time. There is no trouble about that.

The motion to table the amendment was carried.

Upon a further vote the section was adopted.

Secretary read Section No. 31 as follows:

"No money shall be paid out of the treasury except upon appropriation made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed."

The section as read was adopted.

Section 32: "No appropriation shall be made to any charitable or educational institution not under the absolute control of the State, other than Normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all members elected to each house."

MR. OATES—I move its adoption.

MR. SPRAGINS—I have an amendment.

The clerk read the amendment. Striking out the words "other than Normal schools established by law for the professional training of teachers for the public schools of the State."

MR. O'NEAL—I move to lay the amendment on the table.

MR. SPRAGINS—I offered that amendment because I saw no good reasons why the Agricultural Schools of the State, the

Southern University at Greensboro, the Howard College should require a two-thirds vote in order to receive an appropriation and the Normal School should get an appropriation by a majority vote. I saw no good reason for that and thought it an injustice.

MR. OATES—The section as reported by the committee is just as it is found in the Constitution of 1875, and I do not think those institutions have suffered by it. Therefore I move to lay it on the table.

The motion to table was carried.

Upon a further vote the section was adopted

Section No. 33 was read by the Secretary. "No act of the Legislature shall authorize the investment of any trust fund by executors, administrators, guardians and other trustees in the bonds, or stock of any private corporation and any such acts now existing are avoided, saving investments heretofore made."

MR. OATES—That is just as it stands in the present Constitution and I move its adoption.

Section adopted as read.

Section No. 34 was read as follows: "The power to change the venue in civil and criminal causes is vested in the courts, to be exercised in such manner as shall be provided by law."

MR. OATES—That is just as it is found in the present Constitution. I do not see why it should remain in the Legislative Department. It applies rather to the Judicial Department.

MR. JONES—Can't the Harmonics put it there?

MR. OATES—I suppose they can if they see proper. I move its adoption.

The section as read was adopted.

Section No. 35 was read by the secretary as follows: "When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling said session, except by a vote of two-thirds of each House."

MR. JONES (Montgomery)—I have an amendment to Section 35 by striking out the words "except by a two-thirds vote of each House."

MR. JONES—The object of the amendment is to keep the Constitution as it now is and to keep the Legislature when called in special session from legislating on any subjects except those designated by the Governor in his proclamation. He is made judge of the evils on extraordinary occasions which require their presence,

and very often a special session which ought to be ordered would not be called because the Governor and the people might be afraid the Legislature would go to tinkering with other things. I think when an extraordinary session is called it is a wise provision to confine the Legislature to specific work mentioned in the proclamation. My experience is with the Legislators when a power is not to be exercised except by a two-thirds vote of each house they always get that two-thirds vote. You remember at one time the Constitution of this State limited the session unless the Legislature by a two-thirds vote extended it, and they did extend it, and I think it is unwise to change the present Constitution and therefore made the amendment.

MR. REESE—We are dealing with the Legislative Department at this time and the amendment offered by the gentleman from Montgomery seeks to transfer some of the rights that have heretofore pertained to that department to the Executive Department.

MR. JONES—Is not the law now that when a Legislature convenes in special session it shall not act upon anything except the special matter for which it is called together?

MR. REESE—We have taken a great forward step in this matter of cutting down the time of the Legislature, it is unwise in the opinion of some of the delegates on this floor that the Legislature shall only meet once in four years, and dire predictions of calamities have been made which will result from that provision. Now, when the Governor calls the Legislature here on some occasion I do not think they ought to be here as lackies of the Governor to execute his will and legislate only on such matters as he may say, provided there are two-thirds of each house that think it to the best interests of the people of Alabama that other subjects than those suggested by the Governor shall be legislated upon. I have more respect for the intelligence of the people of Alabama than to think they would send a Legislature here and two-thirds of them would agree to legislate upon matters upon which no legislation should be had.

MR. JONES—The language does not say two-thirds of the members of each house. It says two-thirds of each house. That might mean two-thirds of a quorum.

MR. REESE—I think if the Legislature meets here they will not do anything wrong. I believe we can trust them and, Mr. President, I move to lay upon the table the amendment of the gentleman from Montgomery.

THE PRESIDENT—The question is upon the motion of the gentleman from Dallas to lay upon the table the amendment proposed by the gentleman from Montgomery.

The motion was withdrawn.

MR. OATES—I am perfectly aware of the objection made by my colleague from Montgomery, and what he proposes to strike out is new and all that is new in this section. Now, sir, it is a small matter in words, but it is a matter of very great importance in its consequences. Now, the extension of the Legislature and confining it to one session in four years puts things in a somewhat different attitude from what they are now. The Governor may see proper to call the Legislature together and specify in the call as he is required in the Executive Department to do the matters and things to which he invites the attention of the Legislature, but, sir, with the new Constitution and with such seldom sessions of the Legislature it might be the case that he did not foresee some important matter, which, in the opinion of the Legislature, and in his own opinion, ought to be attended to. If as the Constitution now is, he committed that oversight and failed to specify in his message to assemble the Legislature in extraordinary session, although he wanted the Legislature to deal with that particular question and fully concurred with them in it, that ought to be attended to, yet he could not by any message of his change it or confer upon them that power. If they could consider nothing more than the things named in his proclamation calling the extra session it would be necessary for them to adjourn and to call them again in order to attend to that. I am not wedded to the requirement of a two-thirds vote as in this case, but it ought to be in the power of the Legislature, say, by two-thirds of the members elected, or, I don't care, if it be three-fourths of the members; but it ought to be within their power, if there should be anything omitted or anything that is absolutely necessary for them to give attention to when in extra session, additional to which the Governor has specified, they ought to be able to attend to it.

MR. ROBINSON—I want to ask a question. When an extra session of the Legislature should be called, would they ever adjourn?

MR. OATES—As a matter of course, they would.

Mr. President, it seems to me some delegates on this floor act not on the presumption of innocence but on the presumption that the representatives and Governor in certain contingencies are unprincipled and will not discharge their duties faithfully. This only proposes that by a two-thirds vote they might extend their time. I do not object if the delegate wants to offer an amendment that it be three-fourths, but I want it to be possible for the Legislature to attend to something else, if it be found necessary.

MR. ROBINSON—Does not a two-thirds vote give them an unlimited session. Would it be limited at all.



MR. OATES—I said a while ago, I am not wedded to it. I of perfectly willing that it should be enlarged or that any other restrictions may be put in so that it may be possible, that is all, and this is the action of the committee. The question was before them and they considered it and adopted this amendment. I have stated all the reasons according to my mind that I have heard discussed.

MR. REESE—Will you move to table this amendment when you get through?

MR. OATES—I yield the floor to you for that purpose.

MR. O'NEAL—Nobody else has any rights here, one delegate yields to another, and I desire to offer an amendment.

THE PRESIDENT—The delegate from Lauderdale has the floor.

MR. OATES—I promised to yield to the delegate from Dallas.

MR. REESE—I have no string to tie to any amendment, and the gentleman is at liberty to act as he sees fit.

The amendment of the gentleman from Lauderdale was read as follows:

Amend Section 35 by adding thereto the following: That a special session of the Legislature shall be called by the Governor every two years, but such special session shall not continue longer than forty days.

MR. MACDONALD—I move to lay the amendment offered by the delegate from Lauderdale on the table.

MR. O'NEAL—I call for the ayes and noes on that.

There were expressions of dissent.

The call was not sustained.

MR. O'NEAL—I thought I would have an opportunity to explain my amendment.

To which there were expressions of dissent.

THE PRESIDENT—Will the gentleman yield to the gentleman from Lauderdale.

MR. MACDONALD—I do not withdraw the motion, because I think it is another attempt to have biennial sessions.

MR. O'NEAL—I call for the ayes and noes.

THE PRESIDENT—The call has been submitted and not sustained.

Upon a vote being taken the motion to table was carried.

MR. SAMFORD (Pike)—I offer an amendment.

The amendment was read as follows:

"And special sessions shall be limited to thirty days."

MR. O'NEAL—I move to lay the amendment upon the table.

Upon a vote being taken a division was called for, and by a vote of 36 ayes and 46 noes the motion to table was lost.

MR. JONES (Montgomery)—I move the adoption of the amendment.

MR. O'NEAL—I move to amend by making it fifty days.

THE PRESIDENT—It is not in order.

MR. VAUGHAN—I move the previous question upon the Section and amendments.

The main question was ordered.

MR. DENT—I would like to have the Section and amendments read. Do I understand that the amendment of the delegate from Pike is addressed to the amendment offered by the gentleman from Montgomery?

MR. SAMFORD (Pike)—It is addressed to the Section.

MR. O'NEAL—I rise to a point of order that it is out of order because it is not an amendment to the amendment.

MR. SAMFORD (Pike)—It is an amendment to the Section.

MR. O'NEAL—He cannot offer an amendment to the Section. The gentleman from Montgomery offered an amendment to the Section and all the gentleman from Pike could do would be to offer an amendment to the amendment, and I raise the point of order that the amendment of the gentleman from Pike is out of order.

MR. SAMFORD (Pike)—Then I ask that it be considered as a substitute.

MR. O'NEAL—The previous question has been ordered, and you gag us, and must take some of the gag yourselves.

THE PRESIDENT—The Chair holds that the point of order comes too late.

The question being upon the adoption of the amendment of the delegate from Pike, upon a vote the same was adopted.

THE PRESIDENT—The question recurs upon the adoption of the amendment of the delegate from Montgomery.

MR. REESE—I desire to ask if it is not a fact that this Convention laid upon the table the amendment that was offered by the gentleman from Montgomery.

THE PRESIDENT—It did not.

MR. JONES (Montgomery)—No sir, the gentleman made a motion and withdrew it in order to have the Chairman of the Committee hammer me.

The question recurred upon the adoption of the amendment offered by the gentleman from Montgomery, and upon a vote being taken a division was called for, and by a vote of 30 ayes and 56 noes the amendment was lost.

MR. CUNNINGHAM—I rise to a point of order. The defeat of the amendment offered by the gentleman from Montgomery carries with it the amendment that was offered by the gentleman from Pike, and which was adopted.

THE PRESIDENT—The point of order is well taken, and the question recurs upon the adoption of the Section as reported by the Committee.

MR. O'NEAL—Is an amendment in order?

THE PRESIDENT—The previous question has been ordered.

MR. REESE—I desire to make a motion to reconsider the vote by which the previous question was ordered.

MR. PETTUS—A point of order. It would require a suspension of the rules before that motion would be in order.

MR. REESE—I move for a suspension of the rules.

MR. O'NEAL—I call for an aye and no vote on that motion.

The call was not sustained.

Upon a vote being taken a division was called for and the motion to suspend the rules was lost.

MR. ASHCRAFT—I desire to have the Section as amended read.

THE PRESIDENT—It is not amended.

MR. SAMFORD (Pike)—As I understood it the amendment from Montgomery was carried.

THE PRESIDENT—The Chair will state for the information of the delegate from Pike that his amendment was adopted as an amendment, and the question recurring upon the adoption of the amendment, it was lost, and therefore the question recurs upon the adoption of the Section as reported by the Committee.

Upon a vote being taken the Section was adopted.

MR. SAMFORD (Pike)—I give notice now, having voted for the adoption of this Section, that I will make a motion in the morning to reconsider for the purpose of adding the amendment that I propose to the Section.

Section 36 was read as follows:

Sec. 36. No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture of any merchandise, manufacture or commodity; but any county or municipality may appoint such officers when authorized by law.

Mr. Harrison here took the chair.

MR. BROOKS—We have been in session here a good deal today, and our session was extended half an hour before our recess for dinner, and we have done a great deal of work. It is not within twenty minutes of 6 o'clock, and I move that we adjourn.

There were loud expressions of dissent and a vote being taken, the Convention refused to adjourn.

THE PRESIDENT—The question is upon the adoption of Section 36.

MR. OATES—That section, as reported, is just as it exists in the present Constitution, and I move its adoption.

MR. SANFORD (Montgomery)—If that section is passed, will it not hinder or stop altogether the inspection of commercial fertilizer by the Agricultural Department.

MR. OATES—No, sir. The section reads the same as in the present Constitution, and has been the law for twenty-five years.

MR. JONES (Montgomery)—The Supreme Court has decided that it does not.

Upon a vote being taken, the section was adopted.

Section 37 was read as follows:

Sec. 37. No act of the Legislature changing the seat of government of the State shall become a law until the same shall have been submitted to the qualified electors of the State at a general election, and approved by a majority of such electors voting on the same; and such act shall specify the proposed new location.

MR. OATES—That is unchanged, and is the same as in the present Constitution. I move its adoption.

Upon a vote being taken the section was adopted.

Section 38 was read as follows:

Sec. 38. A member of the Legislature who shall corruptly solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, office, appointment, employment, or personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding, expressed or implied, that his vote or his official action shall in any way be influenced thereby; or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another as the consideration of his vote or official influence, or for withholding the same; or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for such offense, and such additional punishment as is or shall be provided by law.

MR. PETTUS—I have an amendment.

The amendment was read as follows: "Amend Section 38 by striking out the word 'corruptly' where it appears in said section.

MR. OATES—That would leave it so that soliciting would be an offense.

MR. PETTUS—I desire to state in regard to that amendment that the present section of the Constitution is believed by some to be somewhat ineffectual in prohibiting the evil that it is aimed at. In this section, which I believe is the same as in the old Constitution, it says that a member of the Legislature who shall corruptly solicit, demand or receive or consent to receive any of these things. Of course the evasion is on the word "corruptly." It could not be proved that his intention was corrupt at the time he solicited or received it, and in that way the section has been evaded and has been a dead-letter in the Constitution and on our statute books. Now, I think that if that section is good at all, and if we are going to put anything into the Constitution on that subject, we ought to put something that can be enforced, and which if we strike out the word "corruptly" and make this section apply where a man solicits or accepts anything of this character, that it will reach in a large measure the evil that it is aimed at. For that reason, I move the adoption of the amendment. I think this is one section where it cannot be argued in favor of it, that it is the same as it was in the old Constitution, because the section as written in the old Constitution has been an absolute and unmitigated failure.

Upon a vote being taken, the amendment was adopted.

MR. HEFLIN (Chambers)—I was about to prepare an amendment in line eleven, where it reads "and shall incur the disabilities provided thereby for such offense." I don't see any good reason

or good sense for "thereby" being in there, and it is not in the old Constitution, but it should read, "shall incur the disabilities provided for such offense."

MR. O'NEAL—It is in the old Constitution.

MR. OATES—I have not compared it.

The amendment offered by the gentleman from Chambers was read as follows: "Amend by striking out the word 'thereby' in line eleven of said section."

MR. OATES—I have heard no reasons given why it should be stricken out. We find on examination that it is in the old Constitution.

MR. JONES (Montgomery)—Does not "thereby" in this section refer to the Constitution?

MR. OATES—It does.

MR. JONES—And the other part, as may be provided by law?

MR. OATES—Yes.

MR. JONES—And is it not, therefore, necessary?

MR. OATES—I think it is. I had not examined it when I was up before. I move to lay the amendment on the table.

Upon a vote being taken, the motion to table was carried.

MR. PETTUS—I desire to offer an amendment.

The amendment was read as follows: "Amend Section 38 by striking out the word 'official' where it appears in line eight of Section 38, page 17, of the Article on Legislative Department."

MR. PETTUS—I would like to call the attention of delegates to the fact that this provides for his vote or official influence in line eight, but further down it is for withholding vote or influence, and not his official influence, as provided in line eight. I think it ought to be made harmonious by inserting official in line nine, or striking it out of line eight, and I think that it would be better to strike it out, because it is his official influence which is desired, and I do not think a man ought to be allowed to play pooh-bah, and for that reason I think he ought not be permitted to sell his influence, personal or otherwise, while he is in office.

MR. LONG (Walker)—Do you think a member of the Legislature has got any influence?

MR. PETTUS—I doubt it.

MR. BURNS—I offer an amendment.

The secretary started to read the amendment.

MR. PETTUS—I make the point of order that the amendment goes to the substitute offered by the gentleman from Dallas, and it is not in order at this time.

THE PRESIDENT PRO TEM—The point of order is well taken.

The question recurred upon the adoption of the amendment of the gentleman from Limestone.

Upon a vote being taken, the amendment was adopted.

The secretary thereupon read the amendment offered by Mr. Burns of Dallas as follows: "Amend Section 38 by adding after the word 'reward' in the third line, the words 'free pass.'"

MR. BURNS—I move that my amendment be referred to the Committee of Corporations. (Laughter).

MR. GREER (Calhoun)—I move that the amendment be tabled.

A vote was taken, and during the vote Mr. Pillans sought recognition.

MR. PILLANS—I call for the ayes and noes.

The chair declared the motion to table carried.

MR. REESE—I call for the ayes and noes.

MR. BULGER—A point of order. The gentleman from Mobile is too late. The result was announced before the gentleman caught the eye of the chair.

MR. PILLANS—I had the floor.

MR. GREEN (Calhoun)—A further point of order. The gentleman from Mobile is not in his seat.

MR. PILLANS—That is a point of order if the gentleman makes it.

MR. BROOKS—Does the chair refuse to consider the point made by my colleague from Mobile, because he was not in his seat? I make the point of order, Mr. President, that the meaning of the rule is that a delegate who is in any regular seat is pro hac vice in his seat, and the object of the rule is to prevent disorder by the members speaking from the aisle or somewhere else. It does not mean that he cannot speak from a regular seat. That is his seat for the time being, otherwise the President could not come

down from the chair and take the seat of any delegate on the floor and address this Convention. Therefore, I make the point of order that my colleague is in his seat.

MR. GREER (Calhoun)—In reply to that, I will state that the President of this Convention has universally ruled that the point of order that a gentleman was not in his seat was always well taken.

THE PRESIDENT PRO TEM—That is the recollection of the present occupant of the chair, and the chair will state further that so far as the demand of the delegate from Mobile for the ayes and noes, the chair did not hear him. If the chair had heard the gentleman, he would have put the question over, and the chair will ask now to be permitted to do so and that the gentleman be allowed to make the point he was about to make.

There being no objection, the leave was given.

MR. PILLANS—I respectfully say that I knew the chair did not hear me. I have such confidence in the chair personally, as well as the position he occupies, that I knew he did not hear me, but the instant the question was stated I called for the ayes and noes.

THE PRESIDENT PRO TEM—Upon what question?

MR. PILLANS—Upon the question before the house—the amendment offered by the gentleman from Dallas.

THE PRESIDENT PRO TEM—A motion was made and put by the chair to table the amendment of the gentleman from Dallas.

MR. PILLANS—And I immediately demanded the ayes and noes upon that question.

THE PRESIDENT PRO TEM—In order that no injustice may be done, the chair asks that the call for the ayes and noes be put.

MR. REESE—I rise to a point of order. The gentleman from Dallas, my colleague, offered this amendment, and he never had surrendered the floor. He was upon the floor and a motion was made to table, and immediately the gentleman from Dallas commenced demanding the ayes and noes, and he has had the floor ever since.

THE PRESIDENT PRO TEM—The Chair has consented, and I believe the Convention will not consent, to put the call for the ayes and noes. The Chair does not agree with the last gentleman from Dallas, because there is a motion made by his colleague to refer the amendment to the Committee on Corporations.



MR. BURNS—I take the position that I had the floor.

THE PRESIDENT PRO TEM—The delegate will pardon the Chair, but the delegate certainly took his seat, and the Chair recognized another gentleman. The Chair asks consent of this Convention that the Convention now act upon the call for the ayes and noes demanded by the delegate from Mobile.

MR. COFER—I rise to a point of order, that this is not germane and it has been defeated by this House on a different occasion, and has been settled.

THE PRESIDENT PRO TEM—The Chair rules the point of order well taken.

MR. JONES (Montgomery)—I appeal from the decision of the Chair.

MR. BOONE—I call for the ayes and noes on the question whether the Chair shall be sustained in ruling that it is not germane.

MR. GREER (Calhoun)—I move that we now adjourn.

MR. REESE—I demand the ayes and noes on the motion to adjourn. I will withdraw the call.

MR. BROOKS—I insist on the ayes and noes being called.

MR. JONES (Montgomery)—What does the Chair do with my appeal?

THE PRESIDENT PRO TEM—There are so many appeals, of the delegate will pardon the Chair and allow him one moment. After the appeal of the delegate from Montgomery there was a motion to adjourn, and the ayes and noes were demanded, and the Chair is told by the Secretary that the demand was sustained.

MR. O'NEAL—The demand for the ayes and noes was withdrawn.

MR. FITTS—There never was any standing up on that proposition.

MR. JONES (Montgomery)—Then my appeal is still pending on ruling that this matter cannot be offered.

MR. VAUGHAN—The time is nearly out and I move that we remain in session until the question under consideration is disposed of.

MR. HEFLIN (Randolph)—The motion of the gentleman from Calhoun to adjourn is before the House.

MR. PROCTOR—I demand the ayes and noes.

MR. deGRAFFENREID—I rise to a point of order. Pending an appeal from the decision of the Chair no other motion is in order.

MR. BURNS—The motion to adjourn is always in order.

MR. ASHCRAFT—I have not the rule in my hand, but I am sure that it is a parliamentary rule that pending an appeal from the decision of the Chair no other motion is in order.

MR. OATES—I desire to say that certainly the delegate from Lauderdale is mistaken. I have known an appeal to be taken and discussed, and doubtless the present occupant of the Chair has been in the Congress of the United States where they observe the highest rule of parliamentary law. It may be discussed for one or two days before it is decided, and we adjourned when it was a pending question, and it does not have to be disposed of as the main question before the Convention.

MR. SAMFORD (Pike)—I give notice of a reconsideration of Section 35, and I have received information that I have sickness in my family and cannot be here tomorrow. I desire to make the motion to reconsider the vote whereby Section 35 was adopted and ask that it lie over until tomorrow.

There being no objection the motion was entered.

THE PRESIDENT PRO TEM—Before putting the motion to adjourn the Chair desires to submit to the Convention the following requests for leaves of absence. Mr.—

MR. PILLANS—Before that is done I want to understand if we have called for a vote by the ayes and noes, if the clock strikes 6 it goes over, and I shall insist that we have the vote on that question, and that the vote be proceeded with.

MR. JONES (Montgomery)—I move that we remain in session until that appeal has been settled.

To which there were loud expressions of dissent.

MR. GREER (Calhoun)—I move we do now adjourn.

THE PRESIDENT PRO TEM—All who favor the motion of the delegate from Montgomery will say I.

A division was called for.

Mr. Greer (Calhoun) and Mr. Cofer sought recognition upon a point of order.

The clock struck the hour of 6.

THE PRESIDENT PRO TEM—The point of order is overruled. The Convention is taking a vote.

MR. GREER (Calhoun)—Before that vote is taken I want to raise the point of order that it should be a vote to suspend the rules.

THE PRESIDENT PRO TEM—The point of order is overruled. A motion to fix the time of adjournment is always in order.

By a vote of 50 ayes and 36 noes the motion of the gentleman from Montgomery (Mr. Jones) was carried.

MR. GREER (Calhoun)—Do I understand that the rule that this Convention can remain in session without a suspension of the rules.

MR. JONES—It does not require a suspension of the rules.

MR. HEFLIN (Chambers)—I make the point of order that it requires a two-thirds vote to suspend the rules, and the point of order of the gentleman from Calhoun is well taken.

MR. O'NEAL—I make the point of order that a motion to adjourn or fix the time of adjournment is a motion of the highest privilege, and can be put at any time.

MR. JONES (Montgomery)—I make the point of order that the Convention unanimously remain here when the report of the Judiciary Committee came up in regard to our pay.

THE PRESIDENT PRO TEM.—There was so much confusion the Chair has not had an opportunity to examine the rules, but the Chair is of the opinion that a motion to fix the time of adjournment is one of the highest order.

MR. BROOKS—It is a question of extending the session, and not a question of adjourning. The Convention adjourns by reason of the hour being 6 o'clock.

MR. JONES (Montgomery)—I make the point of order that the Chair has already decided that this Convention shall remain in session until the appeal is disposed of.

MR. LONG (Walker)—I move that we adjourn.

MR. REESE—I make the point of order that the time has already been fixed and the motion is out of order.

THE PRESIDENT PRO TEM—The Chair will ask the indulgence of the house a moment that he may examine the papers. The Chair has been ruling rapidly.

MR. JONES (Montgomery)—Don't the Chair sometimes hear members on a question of this sort?

THE PRESIDENT PRO TEM—With pleasure.

MR. REESE—I make the point of order that an appeal from the decision of the Chair is not debatable.

MR. JONES—I understand that, but it is the custom of every civilized parliament in the world, if the Chair choses to do so, to accord a member that privilege.

MR. PETTUS—I cite the Chair to Rule 2, which provides that an appeal shall be decided without debate, except that the delegate to whom he may yield, may speak to the appeal not exceeding five minutes.

MR. JONES—I think the Chair, perhaps in the confusion—

MR. BULGER—I rise to a point of order. The delegate from Walker made a motion to adjourn, and I cite the Chair to Rule 26, that it is always in order, unless prevented by certain exceptions, of which this is not one.

MR. PETTUS—The point of order comes too late.

THE PRESIDENT PRO TEM—The Chair would be pleased to hear from the delegate from Limestone on that.

MR. BULGER—I invite the attention to Rule 26, which is very clear in defining the time of adjournment.

MR. JONES—I make a point of order that no new business has been transacted and he could not make a motion to adjourn.

MR. BULGER—I submit, Mr. President, that the motion to adjourn made by the gentleman from Walker was pending when the gentleman from Montgomery took the floor. Now, I believe that this Convention has the right to have that motion put to adjourn, under Rule 26 on page 10 of the rules governing this Convention.

MR. PETTUS—The Chair, I believe, announced that he wanted to hear from me upon the point of order, or was willing to hear from me. I would like to state that a motion to adjourn shall always be in order, except in certain cases, and one of the exceptions is when a roll is being called or when a vote is being verified, or when a member has the floor. The gentleman from Montgomery had the floor under Rule 2, and was discussing a point of order, and a motion could not be put while he had the floor under Rule 26, and I make the further point of order that the Convention had already, by its previous action fixed the time at which the Convention should adjourn, and that that motion had precedence of the motion to adjourn, and that motion having been acted upon, the motion to adjourn was not in order, especially since the gentleman from Montgomery had the floor, especially under the latter part of Rule 26, which states that a motion to adjourn is not in order when a member has the floor.

PRESIDENT PRO TEM—The gentleman from Montgomery has the floor and the point of order is not well taken.

MR. JONES—I was about to say that in the hurry of the decision the Chair, perhaps, did not apprehend the precise point passed upon by the Chair. The Chair ruled that the inclusion of the word “pass” in this section with reference to the General Assembly was not germane to the section. If that is what the Chair put its ruling on, that something of that sort had already been decided. I submit to the Chair with all due deference that the argument hardly needs refutation to say that the sovereign people of Alabama, in Convention assembled, are powerless to insert in any clause to which the matter relates, a prohibition upon the members of the General Assembly. What does germane mean? It is cognate to, relates to, not foreign to, akin to, or a cousin to, the proposition. There is not a semblance of ground on which to maintain the argument that it is not germane.

THE PRESIDENT PRO TEM.—The Chair will say this, the question is not whether it is germane or not, but whether it was included in the former action of this Convention, if it has been it is *res adjudicata*.

MR. JONES—Then I say with all due respect. How in the name of God can a thing be *res adjudicata* by a motion to lay on the table which simply says we won't hear the matter now. That would have been the effect if this original matter was offered here, but that matter that is laid on the table is not offered here. It is simply saying that they shall not receive, and before it was a long provision about their removal from office and making them guilty of a misdemeanor, and I submit on reflection that I think the Chair will conclude that the sovereign people of Alabama in Convention assembled are not bound by such extremes that they cannot consider such a matter. I do not wish to take up the time of the Chair further.

THE PRESIDENT PRO TEM.—The Chair desires to state that a question previous to this, proposed in the attempt to dispatch business rapidly, when the Chair ruled rapidly, and I am informed by the Secretary that this very amendment was laid upon the table.

MR. JONES — There were three amendments, one that he should not receive his mileage if he used a pass, and a second one that if a member of the General Assembly should use a pass he would be guilty of a misdemeanor and forfeit his office, that is all the amendments that have been before the house.

THE PRESIDENT PRO TEM.—The very question on which you raised the point of order, the Secretary informs me that before your point of order was raised, on motion, it was laid upon the table. The Secretary will read the record, and the Chair asks the indulgence of the house to straighten the record.

The record was read as follows: Amendment by Mr. Burns:

Mr. Greer of Callhoun moved to table and the motion prevailed.

MR. PILLANS—

MR. SAMFORD—That is not correct—

MR. FITTS—Nothing like that happened.

THE SECRETARY—The Chair did announce that the motion was tabled.

MR. JONES (Montgomery)—I object to the secretary having a colloquy with the members of the house.

MR. LONG (Walker)—I move that this Convention do now adjourn.

MR. JONES—That is not in order. Let us stay here and vote on this thing that is all we want.

MR. LONG (Walker)—I insist on my motion.

MR. PETTUS—I insist that the motion to fix the time to which the Convention adjourns is of the highest privilege, and having fixed the time, a motion to adjourn subsequently cannot be maintained without a suspension of the rules.

MR. SAMFORD (Pike)—I desire to change the statement I made with reference to the remark I made in respect to the record. I meant no reflection upon the Secretary, but the Secretary got it as it transpired, the Chair afterwards on the protest of the gentleman from Mobile, stated that he would put the vote on the ayes and noes as demanded.

THE PRESIDENT PRO TEM.—The Chair will state to the delegates that is what the Chair was trying to do when the delegate arose and insisted upon his appeal, and stopped the Chair from doing it.

MR. LONG (Walker)—I rise to a question of personal privilege. I made a motion to adjourn and ask a ruling on it.

THE PRESIDENT PRO TEM.—The Chair rules, the Convention having agreed to remain in session until this question is disposed of, that the motion is out of order.

MR. LONG (Walker) — I appeal from the decision of the Chair.

THE PRESIDENT PRO TEM.—The gentleman is out of order.

MR. BROOKS—I move that the appeal be put to the house.

MR. O'NEAL—Let me call the attention of the Chair to a principle of parliamentary law which bears upon this question.

There were loud cries of no no.

MR. REESE—I rise to a question——

MR. ASHCRAFT—I arise to a point of order. When the President put the vote on the motion to table the amendment by the gentleman from Dallas, as soon as the question was announced the gentleman from Mobile began to demand the ayes and noes, but the Chairman, not hearing him, proceeded until, as the Clerk's records show, he had announced that the vote had carried, thereupon the gentleman from Mobile was heard by the Chair and the Chair by unanimous consent proposed to repeat the question, and thereupon the gentleman from Calhoun made the point of order that the question was *res adjudicata*, having been passed upon at a previous hour. The Chair sustained the point of order made by the gentleman from Calhoun, and thereupon the gentleman from Montgomery appealed from the decision of the Chair.

THE PRESIDENT PRO TEM.—That is the Chair's recollection of it, the Chair appeals to the Convention to let it fix the record. The gentlemen who are appealing shall have what they desire. I want to do what is fair, but I want to correct this record.

MR. CARMICHAEL (Colbert)—I arise to a point of order. The gentleman from Lauderdale stated the proposition correctly except in this respect: The Chairman of this Convention never did submit the question as to whether there was objection, or whether unanimous consent would be given to a yea and nay vote as demanded by the gentleman from Mobile, but the Chairman was endeavoring to facilitate the Convention and to get them to agree, but the Chairman never did succeed.

MR. REESE—I make the point of order that this Convention has ordered an appeal, the appeal is pending, and that the gentleman is out of order at this time. There is nothing except to take a vote.

THE PRESIDENT PRO TEM.—The Chair will be your servant and carry out your wishes and no advantage will be taken of any member, but I insist there is an error, in the record, and the Chair's recollection sustains the Secretary's minutes, and it will put the records in a bad shape to say that this motion was laid on the table.

MR. JONES—We can correct the journal tomorrow morning, when it is read. We are satisfied as to what the facts are.

MR. BULGER—I submit that the journal speaks the truth in this transaction, and that this Convention has no power now in this manner to correct the journal.

MR. REESE—I make the point of order that the appeal is not debatable and the gentleman from Tallapoosa has spoken sixteen times on the proposition.

MR. BROWNE—I make the point of order that a gentleman cannot appeal from a decision of the Chair as to the state of the record when the record speaks for itself.

MR. JONES—It has not been approved by this house, and it does not speak the truth until then.

MR. SAMFORD—In view of the state of the record—

There were vociferous cries of vote, vote—

MR. SAMFORD—In view of the state of the record, I move that the gentleman from Dallas be taken from the table.

MR. PARKER (Cullman)—I make the point of order that no motion can be made while an appeal is being taken.

MR. SAMFORD (Pike)—And upon my motion I demand the ayes and noes.

MR. REESE—I rise to a point of inquiry. Is the request at this time for a verification? There seems to be some doubt as to whether the gentleman's amendment was tabled or not, and in the confusion the vote was misunderstood. I contend that the Convention had a right after the commencement of the vote to demand a verification, and I call for a verification of the vote.

MR. SAMFORD—The Chair has ruled, as I understand it, that the Secretary is correct, and that being the fact the amendment of the gentleman from Dallas is upon the table, and I have made a motion that the amendment be taken from the table, and upon that I call for the ayes and noes.

MR. BROWNE—I make the point of order that this house stands adjourned. That is new business, a motion to take from the table, and was not incorporated in the motion to extend the session.

THE PRESIDENT PRO TEM—I appeal to the Convention that we are not acting with proper regard for each other. The Chair is desirous of doing what is right but there are so many delegates on the floor, and so many points of order, that it is impossible for the Chair to decide anything.

MR. PETTUS—I ask what the appeal was taken from?

THE PRESIDENT PRO TEM—It was taken from the ruling of the Chair in respect to the amendment offered by the gentleman from Dallas.



MR. O'NEAL—I move that the Sergeant-at-Arms be requested to keep order in this house.

MR. PILLANS—Have we a right to have a yea and nay vote upon the appeal? We can fix the record afterwards.

MR. BULGER—I insist that the record is right now. It don't need any fixing, and won't have to be fixed. It is put down as this things occurs and the gentleman from Mobile cannot take a vote and afterwards fix the record. I say it is unparliamentary and cannot be done. The record in this case speaks the truth, just as it occurred.

MR. REESE—I charge that the gentleman from Tallapoosa has made that point of order half a dozen times, and he is filibustering in this Convention.

MR. HEFLIN (Chambers)—I would like to ask the gentleman from Tallapoosa a question. Do you not think, sir, that when Patrick Henry said, "Give me liberty or give me death," he said a great thing?

MR. BOONE—I make the point of order that Patrick Henry is long since dead.

THE PRESIDENT PRO TEM.—The chair will listen, whenever the Convention comes to order, and remains so.

MR. SAMFORD (Pike)—This Convention is entitled to have the vote put to it, and I respectfully demand, as a member of this Convention, that we have the vote upon the question of appeal, made by the gentleman from Montgomery. I do not desire to be disrespectful to the Convention, or to the chair, but an appeal has been taken from a decision of the chair and the Convention is entitled to a vote upon it, whatever it may be.

THE PRESIDENT PRO TEM.—And the Convention shall have the opportunity if they will stay here and vote.

MR. BROWNE—I desire a ruling upon my point of order.

MR. O'NEAL—The gentleman is out of order; there is nothing before this house but the appeal.

MR. BROWNE—I rise to a point of order. I know the gentlemen do not want to decide it, but I make the point of order that the chair should not entertain an appeal for the purpose of making the records speak what is not the truth.

MR. O'NEAL—Who is to judge whether it is true—you or the house?

MR. BROWNE—The chair.

MR. O'NEAL—No, sir; this house proposes to judge whether it is true or not. This house proposes to do it, and no one can control this house.

MR. BROWNE—I desire a ruling upon a point of order.

MR. LONG (Walker)—I respectfully ask the ruling of the chair. Awhile ago I made a motion to adjourn. The chair ruled that I had no right to make the motion at that time. On that I took an appeal from the decision of the chair that should have preceded over the appeal of the gentleman from Montgomery. The last appeal should be settled first, and I contend that a majority of this Convention have a right to adjourn.

MR. JONES—I respectfully insist that we are entitled to have this vote, and ask the chair respectfully if he is going to put the question.

MR. BROWNE—Will the chair rule on my point of order against this appeal, because it is an attempt to make the records speak what is not the truth?

THE PRESIDENT PRO TEM.—The chair will ask the delegate from Montgomery and others favoring his position, if they will consent that the action the chair was about to take upon the demand of the delegate from Mobile would enable us to correct the journal about that matter being laid upon the table?

MR. JONES—This house will settle what its records contain, and I respectfully insist upon my appeal.

THE PRESIDENT PRO TEM.—Then the delegate shall have it, and the question is, shall the chair be sustained?

MR. JONES—I demand the ayes and noes.

The call for the ayes and noes was sustained.

MR. WILSON (Clarke)—I have come into the hall since the ruling of the chair was made, and I would like to know what the chair ruled, and from which there is an appeal, so that I may intelligently vote upon the appeal from the ruling of the chair.

MR. JONES—If the gentleman will allow me, I will state it.

Objection was made.

MR. FERGUSON—I arise to a question of inquiry. What is it that we are voting on?

THE PRESIDENT PRO TEM.—The chair will state for the information of the delegates that the Convention had under consideration Section 38 to the Article on Legislative Department. An amendment was offered by the delegate from Dallas (Mr. Burns)

to amend said section by adding after the word "reward" in the third line the words "free passes."

The point of order was raised by the delegate from Calhoun that the question of free passes was *res adjudicata*, having heretofore been settled by this Convention and the chair sustained the point of order, and from that ruling the delegate from Montgomery appealed, and the question is shall the decision of the Chair be sustained?

MR. WILSON (Clark)—I arise to state my position on the question.

MR. REESE—An appeal is not debatable, and the gentleman has no right to debate the question.

THE PRESIDENT PRO TEM.—The point of order is well taken. Proceed with the call.

MR. BURNS (Dallas)—I arise to a question of privilege. I have never yet yielded the floor.

Upon the call of the roll the vote resulted as follows:

#### AYES

Almon,	Heflin, of Chambers,	Rogers, of Lowndes,
Barefield,	Heflin, of Randolph,	Searcy,
Browne,	Henderson,	Sentell,
Bulger,	Knight,	Sloan,
Carmichael, of Colbert,	Long, of Butler,	Smith, of Mobile,
Cofer,	NeSmith,	Smith, Mac A.,
Davis, of DeKalb,	Parker, of Cullman,	Sorrell,
Davis, of Etowah,	Porter,	Williams, of Marengo,
Eyster,	Proctor,	Wilson, of Clarke,
Greer, of Calhoun,	Reynolds (Henry),	Wilson, of Washington,

TOTAL—30

#### NOES

Ashcraft,	Ferguson,	Lomax,
Banks,	Fitts,	Lowe, of Jefferson,
Beddow,	Fletcher,	Macdonald,
Blackwell,	Glover,	McMillan, of Wilcox,
Boone,	Handley,	Martin,
Brooks,	Hood,	Maxwell,
Burns,	Howell,	Merrill,
Cobb,	Jenkins,	Miller, of Wilcox,
Coleman, of Greene,	Jones, of Hale,	Moody,
Cunningham,	Jones, of Wilcox,	Murphree,
Dent,	Jones, of Montgomery,	Norman,
Duke,	Kyle,	Norwood,
Eley,	Leigh,	Oates,

O'Neal, of Lauderdale,	Robinson,	Taylor,
Opp,	Rogers, of Sumter,	Vaughan,
Palmer,	Samford,	Walker,
Parker, of Elmore,	Sanders,	Weakley,
Pettus,	Sanford,	Whiteside,
Pillans,	Selheimer,	Winn.
Pitts,	Spragins,	
Reese,	Stewart,	

TOTAL—61

## ABSENT OR NOT VOTING

Messrs. President,	Graham, of Talladega,	Morrisette.
Altman,	Grant,	Mulkey,
Bartlett,	Grayson,	O'Neill (Jefferson).
Beavers,	Greer, of Perry,	O'Rear,
Bethune,	Haley,	Pearce,
Burnett,	Harrison,	Phillips,
Byars,	Hinson,	Renfro,
Cardon,	Hodges,	Reynolds, of Chilton,
Carmichael, of Coffee,	Howze,	Smith, Morgan M.,
Carnathon,	Inge,	Sollie,
Case,	Jackson,	Spears,
Chapman,	Jones, of Bibb,	Studdard,
Coleman, of Walker	King,	Thompson,
Cornwall,	Kirk,	Waddell,
Craig,	Kirkland,	Watts,
deGraffenreid,	Ledbetter,	Weatherly,
Espy,	Locklin,	White,
Foshee,	Long, of Walker,	Willet,
Foster,	Lowe, of Lawrence,	Williams, of Barbour,
Freeman,	McMillan (Baldwin),	Williams, of Elmore,
Gilmore,	Malone,	
Graham, of Montgomery,	Miller, of Marengo,	

And by a vote of 30 ayes and 60 noes the decision of the Chair was not sustained.

MR. HEFLIN (Chambers)—I make the point of order that the House stands adjourned.

Leaves of absence were granted Mr. Vaughan of Dallas, Mr. Reese, Mr. King and Mr. Smith of Autauga, for tomorrow (Saturday) and thereupon at 6:30 o'clock the Convention adjourned.

## FIFTIETH DAY

MONTGOMERY, ALA.,

Saturday, July 20, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by the Rev. Mr. Howell, as follows:

O Lord, we thank Thee for the preservation of our lives. We thank Thee for Thy loving providence, which has been over and about us all the days of our life. We thank Thee for this land of civilization and for its Christian men and women. We thank Thee for all the influences of Thy providence, which have been brought to bear upon us, and lead us away from our sins. We pray Thee to direct us this day, aid us in the work in which we are engaged, and may the actions of our lives, the words of our mouths and meditation of our hearts be acceptable to Thy sight. O Lord, direct us in this work. May we realize the responsibility we are under unto Thee, and that we are under to the people we represent, and may the Great King of Kings, Lord of Lords, lead us and direct us in the way of all truth. Forgive our sins, blot out all our transgressions and may we live soberly and righteously and godly lives in this present world, and when at last we come to the end of life, may we have a conscience void of offense toward Thee, and toward all mankind, and finally when our lives and labors are all over, and we appear in the great beyond, may the Lord accept and save us, through Jesus Christ. Amen.

Upon the call of the roll 94 delegates responded to their names.

Leaves of absence were granted as follows To Mr. Miller (Wilcox) for today and Monday; Mr. Winn for Monday; to Mr. Burnett for today; to Mr. Kirk for today; to Mr. Sanford (Pike) today on account of sickness; to Mr. Pitts of Dallas for today.

The roll was called for introduction of ordinances, resolutions, etc.

MR. BOONE—I yield my turn to the delegate from Chambers.

MR. ROBINSON—I have a resolution I desire to offer for passage.

The Clerk read the resolution as follows:

Resolution No. 257, by Mr. Robinson:

Resolution for final adjournment:

Whereas, The Act of the General Assembly of Alabama calling this Convention together in fixing the compensation of the members thereof, contained the following proviso: "That the per diem compensation shall not be allowed or paid to any member of the Convention for a longer time than fifty days."

And whereas, The Democratic party of Alabama, when it nominated its candidates for membership to this Convention, declared in its platform as follows, to-wit: "The Democratic party of the State of Alabama, in Convention assembled, endorse the act to provide for the holding of a Constitutional Convention to revise and amend the Constitution of this State, approved December the 11th, 1900, and favor the carrying out of all the provisions of said act."

And, whereas, The chairman of the Campaign Committee of said party in an address issued to the voters of this State urging the election of the candidates of said party, promised the people as follows, to-wit: "The Campaign Committee of the Democratic party hereby reasserts the pledges made and in the name of every Democratic nominee, State, Congressional, Senatorial, and county, unqualifiedly assures the people that every plank of the platform and every provision of the act calling the Convention shall be kept and complied with. "And, whereas, the fifty days for which the members of this Convention shall receive pay as provided in said act will expire today.

And, whereas, The members of this Convention have declared by resolution that they are unwilling to remain longer in session without pay, and

Whereas, the Democratic members of This Convention should not be required to violate the sacred pledges made by them to the people who elected them.

Therefore, be it Resolved, That this Convention shall stand adjourned sine die at 6 o'clock p. m. today.

The question being upon the adoption of the resolution a vote being taken, the resolution offered by the gentleman from Chambers was lost.

MR. BURNS—I have a resolution to offer.

The Clerk read the resolution as follows:

Resolution No. 258, by Mr. Burns:

Resolved, That the expenses of this Convention exceeds the amount actually necessary.

Referred to the Committee on Rules.

MR. COLEMAN (Greene)—I have an ordinance I desire to offer.

The clerk read the ordinance as follows:

Ordinance No. 425 by Mr. Coleman (Greene.)

AN ORDINANCE

Be it ordained that no railroad or other transportation company or corporation shall grant free passes, or sell tickets or passes at a discount other than as sold to the public generally, to any member of the Legislature or to any person holding office under this State, and any such member or officer receiving such pass or ticket for himself or procuring the same for another shall be guilty of a misdemeanor and upon conviction, shall be fined in a sum not exceeding \$1,000 and at the discretion of the court trying the case, in addition to such fine, may be imprisoned for a term not exceeding six months, and upon such conviction, shall be subject to impeachment and removal from office. The courts having jurisdiction shall give this law specially in charge to the grand juries, and when the evidence is sufficient to authorize an indictment, the grand jury must present a true bill. Any county into or through which, such member or officer is transported, by the use of such prohibited pass or ticket, shall have jurisdiction of the case, provided only one prosecution shall be had for the same offense, and, provided further, that nothing herein contained shall prevent the Governor or other authorized person from making special arrangements for transportation of State troops, within the State at less than the regular rates.

Referred to Committee on Corporations.

The report of the Committee on Journal was read, stating that they had examined the journal for the forty-ninth day of the Convention and found the same to be correct.

MR. JONES (Montgomery) — I would like to inquire as to what the journal shows with reference to the amendment offered by the gentleman from Dallas being laid upon the table.

MR. PROCTOR—I move that the journal pertaining to that matter be read.

MR. LONG (Walker)—I make the point of order. That is out of order. The roll is being called for the introduction of resolutions. It would be out of order at this time.

MR. OATES—The point of order, it seems to me, would have been well taken before the report was received and read. It is bad practice to interrupt proceedings in that way.

THE PRESIDENT—It seems to the Chair that the regular order is called for, and the regular order will be the call of the roll of delegates, and after that the Convention may take up the re-

port of the Committee for consideration if it desires. The Secretary will proceed with the call of the roll.

MR. DENT—I send up a resolution, and I ask the attention of the Convention to it when read, as I propose to move the suspension of the rules to put the resolution upon its passage.

The clerk read the resolution, (No. 259) as follows:

Resolution No. 259 by Mr. Dent:

Resolved, That the Committee on Corporations to which has been referred the ordinance introduced today by the delegate from Greene in reference to railroad passes, are hereby instructed to submit a report on said ordinance not later than Tuesday next, the 23rd inst.

When the Secretary had completed the reading of the resolution, the gentleman from Barbour moved to suspend the rules to have the resolution put upon its immediate passage, and called for the ayes and noes.

The call for the ayes and noes was sustained.

THE PRESIDENT—The question is upon suspension of the rules.

MR. GREER (Calhoun)—I would like to hear that resolution read.

THE PRESIDENT—Gentlemen will please give attention to the reading of resolutions. The gentleman from Barbour announced that he would propose to suspend the rules, which ought to invite the attention of delegates. The Secretary will read the resolution. The Chair will not feel bound to order a re-reading where notice has been given of an intention to move to suspend the rules.

The Secretary again read the resolution.

THE PRESIDENT—The ayes and noes have been called for upon a motion to suspend the rules. As many as favor the suspension of the rules for the purpose of placing the resolution just read upon its immediate passage, will say aye, and those opposed no, as your names are called.

On the call of the roll the vote resulted as follows:

#### AYES

Ashcraft,	Brooks,	deGraffenreid,
Banks,	Burns,	Duke,
Barefield,	Chapman,	Eley,
Beddow,	Cobb,	Ferguson,
Blackwell,	Coleman, of Greene,	Fitts,
Boone,	Dent,	Fletcher,



Freeman,	McMillan, of Baldwin,	Pillans,
Glover,	McMillan (Wilcox),	Robinson,
Graham, of Talladega,	Malone,	Rogers (Sumter),
Handley,	Martin,	Sanders,
Heflin, of Chambers,	Maxwell,	Sanford,
Henderson,	Merrill,	Selheimer,
Hood,	Moody,	Smith, Mac. A.,
Jackson,	Murphree,	Sollic,
Jones, of Montgomery,	Norman,	Spears,
Jones, of Wilcox,	Norwood,	Spragins,
Kyle,	Oates,	Taylor,
Leigh,	O'Neal (Lauderdale),	Walker,
Locklin,	Opp,	White,
Lomax,	Palmer,	Whiteside,
Lowe, of Jefferson,	Parker (Elmore),	Williams (Barbour),
Macdonald,	Pettus,	Winn,

TOTAL—66

#### NOES

Messrs. President,	Harrison,	Searcy,
Almon,	Hodges,	Sloan,
Browne,	Howell,	Smith (Mobile),
Bulger,	Kirkland,	Stewart,
Cardon,	Knight,	Stoddard,
Carmichael, of Colbert,	Long, of Butler,	Weakley,
Cofer,	Long, of Walker,	William (Marengo),
Craig,	Mulkey,	Williams (Elmore),
Cunningham,	NeSmith,	Wilson (Clarke),
Davis, of DeKalb,	Parker (Cullman),	Wilson (Washington),
Eyster,	Proctor,	
Greer, of Calhoun,	Rogers (Lowndes),	

TOTAL—34

#### ABSENT OR NOT VOTING

Altman,	Foster,	King,
Bartlett,	Gilmore,	Kirk,
Beavers,	Graham, of Montgomery,	Ledbetter,
Bethune,	Grant,	Lowe, of Lawrence,
Burnett,	Grayson,	Miller (Marengo),
Byars,	Greer, of Perry,	Miller (Wilcox),
Carmichael, of Coffee,	Haley,	Morrisette,
Carnathan,	Heflin, of Randolph,	O'Neill, of Jefferson,
Case,	Hinson,	O'Rear,
Coleman, of Walker,	Howze,	Pearce,
Cornwall,	Inge,	Phillips,
Davis, of Etowah,	Jenkins,	Pitts,
Espy,	Jones, of Bibb,	Porter,
Foshee,	Jones, of Hale,	Reese,

Renfro,	Smith, Morgan M.,	Waddell,
Reynolds (Chilton),	Sorrell,	Watts,
Reynolds, of Henry,	Thompson,	Weatherly,
Samford,	Vaughan,	Willet,
Sentell,		

THE PRESIDENT—On casting up the vote, it appears that there are 66 ayes and 34 noes, and the motion to suspend the rules is lost.

MR. JONES (Montgomery)—Does it take two-thirds of the entire house, or two-thirds of those voting under the rules?

THE PRESIDENT — It requires two-thirds of those who voted.

MR. DENT — I ask that the resolution be referred to the Committee on Rules.

MR. LONG (Walker)—I rise to a point of order, the resolution should be referred by the Chair under the rules, and it would require a two-third vote to suspend the rules.

THE PRESIDENT—The Chair has not yet referred it.

MR. DENT—I ask that it be referred to the Committee on Rules.

THE PRESIDENT—The Chair will consider the request of the gentleman. It seems to the Chair that the resolution should go to the Committee on Corporations as it relates to a report from that committee, and is expressing the sense of the Convention. The Chair will refer the resolution to the Committee on Corporations.

MR. JONES (Montgomery)—Has the Convention the right to direct how it shall be referred?

THE PRESIDENT—Yes, if the gentleman makes a motion.

MR. JONES—I move that it be referred to the Committee on Rules.

MR. DENT—I second the motion.

MR. LONG (Walker)—It will require a two-thirds vote to overrule the chair in the matter of reference.

THE PRESIDENT—It is competent for any delegate to move a different reference. Two-thirds of the Convention can order a different reference.

The question will be on the motion to refer, contrary to the indication made by the Chair, this resolution to the Committee on Rules. The Chair thinks it ought to be referred to the Commit-

tee on Corporations. The question is, shall it be referred to the Committee on Corporations, as many as favor that will say aye and those opposed no. It seems to the Chair that the noes have it.

**MR. BROOKS**—The Chair said should it be referred to the Committee on Corporations—that was an inadvertence.

**THE PRESIDENT**—The motion of the gentleman from Barbour is that this resolution be referred to the Committee on Rules. The Chair has ruled that in the opinion of the Chair it should be referred to the Committee on Corporations, and it shall be so referred unless the Convention overrules the reference made by the President.

A vote being taken on a division there were 45 ayes and 52 noes, and the motion of the gentleman from Barbour was lost.

**THE PRESIDENT**—The resolution will be referred to the Committee on Corporations.

The Secretary will continue the call of the roll.

**MR. deGRAFFENREID**—I have an ordinance that I want to introduce, and I ask that it be referred to the Committee on Banks and Banking.

The Clerk read the ordinance as follows:

Ordinance No. 426, by Mr. deGraffenreid:

**Amendment** to the fourth section to the article heretofore adopted on Banks and Banking.

Strike out of Section 4 the words "shall, for such notes and deposits," and insert in lieu thereof the following words: "the purchasers of exchange from the bank, and persons to whom the bank is indebted for the proceeds of notes, bills of exchange and other claims collected by it, shall, for such notes, deposits, exchange and collections."

Referred to Committee on Banks and Banking.

**MR. FREEMAN**—I have an ordinance I desire to introduce.

The Clerk read the ordinance as follows:

Ordinance No. 427, by Mr. N. H. Freeman:

Be it ordained by the people of Alabama in Convention assembled that no corporation attorney shall be eligible to office as member of the Legislature.

Referred to Committee on Corporations.

**MR. GRAHAM (Talladega)**—I have a resolution that I desire to introduce, and if in the opinion of the Chair it will be neces-

sary. I will ask a suspension of the rules that it be put upon its immediate passage.

The Clerk read the ordinance as follows:

Resolution No. 260, by Mr. Graham of Talladega:

Resolved, That this Convention remain in session today until 2 p. m., and then stand adjourned until 11 a. m. next Monday.

THE PRESIDENT—It seems to the Chair that it is a privileged motion.

MR. GRAHAM—I move the adoption of the resolution.

MR. WILLIAMS (Marengo)—I move to amend by inserting 9:30 in place of 11.

THE PRESIDENT—The question will be upon the amendment offered by the gentleman from Marengo.

MR. SANDERS—I propose to further amend by striking out 2 p. m., and that the Convention stand adjourned at the regular time.

MR. COBB—I move to lay the amendment of the gentleman upon the table.

THE PRESIDENT—The motion is out of order. As many as favor the amendment of the gentleman from Limestone to strike out 11 and insert 9:30 will say aye. The ayes seem to have it.

A division was called for.

THE PRESIDENT—As many as favor the adoption of the amendment by striking out 11 and inserting 9:30 will please rise and remain standing until counted.

MR. O'NEAL—I rise to a point of order—the gentleman from Limestone did not make that motion.

THE PRESIDENT—The Chair should have stated the gentleman from Marengo, Mr. Williams. The question is on the motion to strike out 11 and insert 9:30. The Chair will entertain the motion of the gentleman from Limestone as soon as this result is ascertained.

A vote being taken there were 37 ayes and 47 noes, and the amendment was lost.

MR. SANDERS—I move to amend by striking out 2 p. m. today so that the Convention shall stand adjourned at its regular time, 1 p. m.

THE PRESIDENT—Stand adjourned? The Convention at 1 p. m. stands adjourned until 3:30 p. m. Do you wish to strike out 2 and insert 1 in the resolution?

MR. SANDERS—Yes, sir.

THE PRESIDENT—The question will be on the amendment of the gentleman from Limestone, which is to strike out 2 p. m. and insert 1 p. m.

MR. STEWART—I move to lay the resolution and amendment on the table.

THE PRESIDENT—The motion is not in order. This is a motion to fix the time on adjournment.

A vote being taken there were 48 ayes and 33 noes, and the amendment was adopted on a division.

MR. O'NEAL—I ask for a verification of the vote.

THE PRESIDENT—Verification is demanded.

There were loud cries of "No."

MR. MURPHREE—I move to strike out 11 and insert 10.

THE PRESIDENT—Verification is demanded of the vote just had. As many as favor the motion of the gentleman from Limestone will please rise and remain standing, all those who voted should rise, this is a verification of the vote, and the correctness of the Secretary's count is challenged.

MR. LOMAX—I did not vote before; have I right to vote now?

THE PRESIDENT—Not on the verification.

THE PRESIDENT—Does the gentleman from Pike, Mr. Murphree, desire to vote on this verification? The Secretary has him voting on both sides of this proposition.

MR. MURPHREE—I am opposed to the motion of the gentleman.

The vote on verification showed 51 ayes and 35 noes, and the amendment was declared adopted.

THE PRESIDENT—The gentleman from Pike moves to strike out 11 and insert 10 o'clock.

MR. HEFLIN (Chambers)—I move to lay that upon the table.

Upon a vote being taken there were 28 ayes and 49 noes, and the amendment was lost.

THE PRESIDENT—The motion recurs upon the resolution as amended. The amendment of the gentleman from Pike is lost. The question recurs upon the resolution as amended by the gentleman from Limestone.

The resolution as amended was adopted.

MR. JONES (Montgomery)—I have a resolution.

The Secretary read the resolution as follows:

Resolution No. 261, by Mr. Jones of Montgomery:

Resolved, That the Secretary of this Convention procure a copy of the opinion of the Attorney General as to the right of this Convention to appropriate pay for its members beyond the time fixed in the enabling act, and to have the same printed in the stenographic report.

MR. JONES—I move the suspension of the rules. I think it is important—

THE PRESIDENT—The question is not debatable. The gentleman will state the motion.

MR. JONES—I move to suspend the rules for a consideration of the resolution.

THE PRESIDENT—It is moved to suspend the rules to place the resolution upon its immediate passage.

A vote being taken there were 58 ayes and 21 noes, and the rules were suspended.

MR. JONES (Montgomery)—Mr. President, my only object in doing that is that I think it is due to the Convention that the opinion of the Attorney General should be printed. Now, some of us were of different opinions, and it may be that the opinion of the Attorney General may convince members and the public, and I think at all events it ought to be a part of the record of this Convention.

A vote being taken the resolution was adopted.

Montgomery, Ala., July 18th, 1901

Hon. Thos. L. Sowell, Auditor.

At Office:

My Dear Sir—I have considered the questions propounded by you for my official opinion in the following communication:

“Hon. Charles G. Brown, Attorney-General, etc., Montgomery, Ala.:

“Dear Sir—It is apparent that the Constitutional Convention, now in session, will not be able to complete its labors within fifty days. Section 9 of

an Act entitled 'An Act to provide for holding a Convention to revise and amend the Constitution of this State, approved Dec. 11th, 1900 provides that per diem compensation shall not be allowed or paid to any member of the Convention for a longer time than fifty days.' In case the Convention does hold on in session for a longer time than fifty days, shall I be governed by the mandate of said Act? Or in case the Convention should adopt an ordinance or pass a resolution appropriating money out of the Treasury to cover the extended time, or should order warrants to be drawn to cover the per diem for this extended time, what will be the duty of the Auditor? In your opinion, has the Convention the power to appropriate money out of the Treasury to pay themselves for per diem beyond the limits prescribed in the above mentioned Act?

"Very respectfully,

"T. L. Sowell,

"Auditor."

A categorical reply by simple yea, or nay, answers to the several questions in the order propounded, would not be proper under the circumstances, as the importance of the inquiry presented and the fact that an official opinion from this office is for your guidance only which, if followed, would protect you in your official action thereon; yet if it does not meet with your approval, you can, and should, act according to the dictates, of your judgment and disregard the opinion of the Attorney-General—renders it highly proper that I should state the reasons for the opinion submitted for your consideration. A correct solution of this, to me, intricate problem demands a consideration of the legal and political concept of a Constitutional Convention, its office and powers, its relation to the whole people of the State and the proper boundaries between the office and powers of the Convention and those of the General Assembly of the State as the depository of the legislative power of the State government on matters or subjects, of general and ordinary legislation, except as limited by provisions of the fundamental law of the State.

I do not deem it necessary to even epitomize the history and development of the law of Constitutional Conventions, or to note the distinction between what are termed, by Mr. Jameson, Revolutionary Conventions and Constitutional Conventions, and shall content myself with only saying that I cannot concur with this learned, but partisan, writer in many of his definitions and conclusions on this subject. As the very threshold of this investigation, we are confronted with the consideration of the question as to the legitimate office and relation of the General Assembly of Alabama towards a Constitutional Convention, and whether, or no, it can lawfully define and limit the powers of a Constitutional Convention and restrict their exercise as to time, mode and method. It is contended by Mr. Jameson in his work on Constitutional Conventions that the legislative department of a State can thus define and limit the powers of a Constitutional Convention. I shall endeavor to show that many of his postulates are incorrect and the authorities relied upon by him are not applicable to the Constitution and form

of government of the State of Alabama. In its last analysis, he holds that the authority and commission of the delegates of a Constitutional Convention and the powers of a Convention are derived from the Act of the Legislature in what is commonly termed (but improperly so, as applied to the Constitution of this State), the "Enabling Act" to provide for the holding of a Constitutional Convention. The decisions relied upon by this author and Mr. Ordronaux were rendered upon Constitutions different from our Constitution on the matter of the revision and alteration and amendments of Constitutions; in some of which there were no provisions as to such revision, alteration and amendment, either by the proposal of amendments by the Legislature, or providing for a call of a Convention, and others contained simply provisions for amendments by proposals originating in the Legislature and still others with provision for proposals of amendments, and with a provision empowering the Legislature to submit to the people the question of the expediency of holding a Convention and then empowering the Legislature, if a majority of the qualified electors voted in the affirmative, to call a Convention and for such purposes and in such manner and under such regulations as deemed best and expedient. In these States, except the State of Rhode Island, the power to call a Convention was referred to the general legislative powers of the Legislative department of the State and a submission of the question of the expediency of a Convention was left to the discretion and will of the same department, and the vote of the people was considered as advisory merely—simply addressing itself as a moral or political inducement for the Legislature to grant the expressed desire of the people. In Rhode Island it was held by the court of last resort that as the Constitution specifically provided that amendments should be made by proposals originating in the Legislature, a convention could not be held to form a new Constitution, or revise, amend, or alter the existing Constitution. In Massachusetts it was doubted under the Constitution of 1820, which provided only for proposals of specific amendments by the Legislature, whether the Legislature could take any steps towards submitting to the people the expediency of holding a Convention for the adoption of specific amendments.

It is necessary to call attention to the provisions of the present Constitution of Alabama on this subject, contained in Article XVII.

"Section 1. The General Assembly may, whenever two-thirds of each House shall deem it necessary, propose amendments to this Constitution \*\*\* for the consideration of the people; and it shall be the duty of the several returning officers at the next general election, which shall be held for Representatives, to open a poll for the vote of the qualified electors of the State on the proposed amendments \* \* \* ; and if it shall thereupon appear that a majority of all the qualified electors of the State who voted at said election, voted in favor of the proposed amendments, said amendments shall be valid to all intents and purposes as parts of this Constitution. \* \* \* ."

Sec. 2. "No Convention shall hereafter be held for the purpose of altering or amending the Constitution of this State, unless the question of Convention or no Convention shall be first submitted to a vote of all the electors of the State, and approved by a majority of those voting at said election."



There was a provision substantially as Section 1 in the several preceding Constitutions of the State; but in the Constitution of 1819 there was no provision for a call of a Convention. The Constitutions of 1865 and 1868 contained a provision, differing slightly in immaterial particulars, substantially similar to Section 2 of the present Constitution of 1875; but the Constitution of 1861, adopted at what is commonly known as the Secession Convention, was totally dissimilar and antagonistic in its provisions defining the office and authority of the General Assembly with respect to a Convention, to those of the Constitutions of 1865, 1868 and 1875. The provision in the Constitution of 1861 is as follows: "Provided further, that a Convention of the people of the State may be called by a vote of two-thirds of each branch of the General Assembly under such rules and regulations as the legislature may prescribe to amend the Constitution, or for any other purpose." Who can doubt in the light of history that the powers of the legislature under the Constitution of 1861 were most materially restricted and limited and even prohibited by the Constitution of 1865, 1868 and 1875 formed after the close of the "war between the States." Who can question the doctrine under the Constitutions of 1865, 1868 and 1875, that the delegates to a Constitutional Convention derive their authority and commission and powers from the sovereign people of the State and not from the legislature, or from any improperly so called "Enabling Act" of the legislature? Can a department of the State government not vested with the authority to confer a power, but positively prohibited from exercising such power, and which authority is expressly and solely vested in the people, limit the power of the "highest legislative assembly recognized by law," in a "representative Democratic form" of government directly called into existence by that body in whom the ultimate sovereignty resides? *Goodrich vs. Moore*, 2 Minnesota, p. 61. It would be an unnecessary consumption of time to comment on and critically examine the several decisions of the courts relied upon to sustain the contrary contention of Mr. Jameson and other like new "doctrinaires," as a consideration of most of them will demonstrate that the question involved was not presented, or decided, and that no legitimate conclusion can be drawn therefrom antagonistic to the doctrine contented for in this opinion. The opinion delivered by Chief Justice Agnew in the case of *Wells vs. Baine*, 75 Penn. pp. 39-58, is the leading and strongest presentation of this doctrine of legislative power, and upon which the greatest stress is laid by the advocates for this power of the legislature. The facts of that case essential to the comprehension of the question before the Court were that the legislature of Pennsylvania on June 2, 1871, passed an act to submit to a popular vote the question of calling a Convention by the legislature to amend the Constitution without any special warrant in the existing Constitution of that State, and which contained no provision for amending the Constitution, save by the action of the legislature followed by a ratification of the people, and this action of the legislature in submitting the question of the calling of a Convention was referred to and based upon its general legislative powers; so that the question, as stated in the opinion of the Court on page 30, passed upon by the vote of the people, was only that of the expediency of a call to be subsequently made by the legislature; and if the

question was answered in the affirmative, in the language of the Court, the people simply replied "you (the legislature) may call a Convention. This was all the vote expressed." In April, 1872, the legislature passed an act to provide for the calling of a Convention and among other things provided that the Convention submit the amendments agreed to by it to the qualified voters of the State for their adoption or rejection; and further enacted that such election should be conducted by the officers and in the manner general elections are held in the Commonwealth. The Convention passed an ordinance that the election should be held in the city of Philadelphia by certain persons therein called commissioners, other than those required by law to hold general elections, and giving to the commissioners somewhat fuller and different powers. Two bills in equity were filed against these commissioners of election — one by Wells and other citizens and voters of Philadelphia, and the other by one of the inspectors of election under the general laws of the State governing general elections, averring the invalidity of the ordinance and praying an injunction against the commissioners restraining them from holding said election. The Chief Justice, in his opinion construing the purpose of the act of the legislature in submitting the question of calling a Convention to a vote of the people on pp. 50 and 51, uses the following language: "The present inquiry is not how much power may be conferred by law, but what power was conferred on this Convention. A law must be passed according to the forms of the Constitution. One of these is that no bill shall contain but one subject, which shall be clearly expressed in its title. The title of the act of June 2, 1871, is 'An Act, To authorize a popular vote upon the question of calling a Convention to amend the Constitution of Pennsylvania.' The text of the act is: 'That the question of calling a Convention to amend the Constitution of the Commonwealth be submitted to a vote of the people at the general election to be held, etc. The one subject of both title and text is the question of calling a Convention. That question was authorized to be submitted to a popular vote. In that election each elector expressed his individual opinion on that question and that alone by voting 'for a convention,' or 'against a Convention.' This question was answered in the affirmation by a majority of votes, and the people answering the legislature said: 'You may call a Convention.' This was all the vote expressed. Each vote expressing the opinion of the elector on that question, the majority expressed no more. Thus an analysis of the act, both in title and in text demonstrates that the vote was not a delegation of power except to the legislature. The result of that vote was that the legislature might call a Convention. It was not in itself a call nor did it declare when and how or on what terms the call should be made. That, the very answer to the question necessarily left to the legislature which asked their judgment on the propriety of the call. It was not even a mandate, further than the moral force contained in an expressed desire of the people. It is very evident had the matter dropped there and the legislature had made no call, no Convention and no terms would ever have existed."

The "italics" are those shown in the published opinion of the Court. Right here it is proper to be observed that a submission by the legislature

of a call for a Convention, or the proposal of specific amendments by the legislature, to a vote of the people, is not an act of general, or ordinary, legislation, and the forms prescribed in the Constitution for the enactment of a statute by the Legislature need not be complied with, and the contrary doctrine has been nearly universally repudiated by the courts of highest repute, including that of the Supreme Court of Pennsylvania.

6 Am. and Enc. Ency. of Law, p. 906 and notes; *Commonwealth vs. ex rel Elkin vs. Griest* (Penn.) 50 L. R. A. page 574 and authorities therein cited; *State ex rel Morris vs. Mason* (La.) 9 so. Rep., p. 776.

It is, therefore, manifest that this construction of the Pennsylvania Act of 1871 by the Court was the major and minor premises—the foundation stones on which rested the reasoning, conclusion and decision of the court that the Legislature, and not the people, was the source of the authority and commission of the Convention and that the definition, extent and limit and scope of its powers and the manner, method and regulation of their exercise must be found alone in the subsequent act calling the Convention. This is further shown by similar expressions used by the same Chief Justice in the analagous case of Wood's appeal in same volume of Pennsylvania Reports p. 71. This is also clearly demonstrated by Mr. Jameson in approving the construction and reaching the conclusion expressed by him in the following quotation from his work "that in all cases when a Convention act is submitted to the people it is the mere question of expediency that is passed on by the people. An affirmative vote declares it to be expedient and a negative vote declares it to be inexpedient for the Legislature to call such Convention; a declaration which has neither the effect or form of law. The language of law is "flat," be it done, that such a vote of the people is "Videtur," it seems good—"desideradum est," it is to be desired—a mere expression of a wish, not the uttering of a command." And in a subsequent section he emphasizes this view and follows the language quoted from *Wells vs. Baine supra*, to the effect that such vote of the people has no binding force on the Legislature and that body has still the power and authority at its will and pleasure to call, or not to call a Convention, and if called the Legislature has the sole sovereign power in the act calling the Convention, or in a subsequent act passed before the assembling of the Convention, to define, fix and regulate the powers and purposes of the Convention and the mode, method and time of their exercise by the Convention. It therefore appears to me that it would be the height of illogical juristic reasoning to assert that such a construction could possibly be placed on the provision of our Constitution expressly prohibiting the General Assembly from calling a Convention and directly conferring on the people alone the authority to declare peremptorily by a majority vote that the "Convention shall be held." That such a construction cannot be given to the provision of the Constitution of the State of Alabama is the keystone of the arch of this argument mainly supporting the correctness of this opinion and must be my excuse for invoking its further consideration by you. The power to propose amendments by the Legislature as prescribed by the Constitution, or the power to submit to the vote of the people for their sole and sovereign determination that

a Convention shall be held, does not confer the power to break it either in the act proposing the amendment or in the act submitting the question of Convention to the people any more than to legislate on any subject contrary to its provisions.

State vs. Swift vs. Swift 69 Ind. p. 518-19.

Now let us consider the part which under our present Constitution the General Assembly may act in amending the Constitution. It is evident that its part is restricted to the proposal of amendments in the form and manner prescribed by Section 1 of the Constitution. This provision must be strictly construed and if the form and order in which the proposal of amendments is disregarded by the Legislature it is approved doctrine that the proposed amendment will be invalid, null and void. A strict observance of every substantial requirement in this special grant by the Constitution is enjoyed.

Collier vs. Frierson 24 Ala., p. 100; Koehler vs. Hill 60 Iowa, p.: 543; Oakland Paving Co., vs. Hilton 69 Cal., p. 479.

It is useless to multiply citations to this effect as this is the accepted doctrine. Now if the General Assembly is restricted by this special grant of power to the specific mode, form and manner of proposing amendments, it necessarily follows that all other methods, form and manner, either directly or indirectly, are prohibited to the General Assembly as a matter of right and power in such body. In other words the power and authority to propose specific amendments, being restricted and limited in the special grant to the specified way, the General Assembly cannot directly, or indirectly say, as a matter of power and authority, what a Constitutional Convention, receiving its commission and authority and power from the vote of a majority of the sovereign people, shall or shall not place into the fundamental law of the State. The Constitution thus expressly prohibits the exercise of any such power and authority by the General Assembly. Its only function as to amendments, or revision, of the Constitution is limited to the initiative of proposals of specific amendments as prescribed in the Constitution, and the initiative of a proposal to be submitted to the people for a Convention to be held—not to be called by the General Assembly—to revise and amend, or alter, the whole Constitution. Therefore, every other function is expressly, or impliedly, prohibited by the Constitution. An implied prohibition is as effectual as an express one.

14 R. I. page 654; Taylor vs. Place, 4 R L. p. 324.

The Constitution thus limiting the power of the General Assembly to the proposal of specific amendments and which proposals must be passed in a particular way before submission to the people, if the General Assembly can dictate to the Constitutional Convention what amendments shall, or shall not be made, then it follows that the General Assembly would indirectly be clothed with the power to enact amendments, such a construction in its last analysis would empower the Legislature to do that which the Constitution by the limitation on its power forbids it to do. It is a question of power and authority solely—where is it lodged by our Constitution? There

are limitations by the express provision of our Constitution and form of State government on the General Assembly—restrictions direct and positive and are imposed in the only grant of power to the General Assembly. It is a special grant of restricted and limited power to be exercised according to and within the form and methods prescribed by the Constitution. A special grant of particular and limited power cannot by construction be extended beyond the restrictions and limitations of the grant, and the grantee of such power cannot by indirection go beyond these limitations and restrictions, or evade these prohibitions. The power of the General Assembly to initiate any proposal of amendments to the Constitution is to be strictly construed and must be confined to the mode and manner and form prescribed in the special grant in the Constitution. The Legislature is not authorized, but is directly prohibited from assuming any of the powers of a Constitutional Convention, and cannot propose for the adoption by the people a revision of the whole Constitution in the form of amendments.

Livermere vs. Wait, 25 L. R. A., p. 315.

The power to revise and amend generally the whole Constitution is vested in the Convention which derives its whole power from the people. If the General Assembly cannot, under the form of law, thus assume the powers of the Convention, much less can it command in advance what revision, or amendment, or alteration, shall or shall not be made in the Constitution by the Convention in which alone this sovereign power is vested. Would not such doctrine be in effect to vest in the General Assembly, may be indirectly and negatively, but nevertheless in substance, the power to control the people, to dictate to them and to the Convention, what amendments, alterations and revisions shall, or shall not, be considered and placed in the Constitution. Would it not arm the General Assembly with the power in advance by the act for submitting a mere proposal to the people that a Convention shall be held to revise and amend the whole Constitution, to perpetuate provisions obnoxious to the people? Could it have been the intention of the framers of the Constitution of 1875 to arm the General Assembly with the paramount power of restricting a Convention called by the people to those alterations and amendments only which the General Assembly deemed proper or desired, and thus hampering, binding and fettering in advance the only body which can place restrictions on its power? The very Act itself forbids such a construction. Section 1 plainly and unmistakably speaks its purpose and scope, namely: "That on Tuesday, the 23rd day of April, 1901, an election shall be held for the purpose of determining whether, or not a Convention shall be held to revise and amend the Constitution of this State, and the question of Convention, or no Convention, shall be submitted to the vote of the qualified electors of this State, and if a majority of the voters, voting at said election, shall approve the holding of a Convention for the purposes stated, the Convention shall be held as hereinafter provided." And Section 7 is in the following language: "Said Convention shall continue in session until it shall, by careful revision and amendment of the present Constitution, frame and adopt a revised Constitution for this State."

Can it be contended with any show of reason, or authority, that the power to revise and amend the Constitution was not to be lodged by the people, but lodged by the Legislature, in the Convention according to the express provisions of the Constitution and of this Act? It cannot be contended that by the clause "as hereinafter provided" that the General Assembly had the authority to dictate to a Convention with such broad powers vested by the Constitution in the people and their Convention, what provisions (as the General Assembly seemingly attempted to do), should, or should not, be placed in the Constitution by the commissioned representatives of the sovereign people in the exercise of their delegated and paramount powers to revise and amend the fundamental law of the State. The expression "as hereinafter provided" cannot exceed the power vested in the General Assembly under the limitations of the Constitution, namely: To prescribe the qualification and mode of selecting the delegates and fixing the time and place for the assembling of the Convention, and such other incidents within the limitation on its powers prescribed in the Constitution in its special grant and in harmony with the expressed purpose and power of the Convention and in aid of the sovereignty of the people. Any other commands, provisions and limitations, restrictions and penalties, direct or indirect, not thus in harmony or in aid of the purpose and powers of the Convention are void. This is a different question from that of submitting back to the people for their approval, or disapproval, the revision and amendments of the Constitution—the appointed work of their delegates—for this is not in opposition to their inherent and sovereign rights, and is in harmony with a wise policy conservative of the privilege of the sovereign people to finally supervise the work of their representatives and delegates and approve, or disapprove, the same. In the other cases, the General Assembly proposed to limit the powers of the sovereign people and dictate in advance what a Convention called by the people and receiving its authority solely from them shall do and restrict the exercise of power over which it has no control. The one is in aid of, and in consonance with, the power; the other is antagonistic thereto and subversive thereof. The one may be valid, the other must be invalid—that in aid of and in consonance and harmony with the sovereign power and its full and free exercise can stand the other must fall. If the General Assembly has the vested right to limit the time of the Convention to fifty years, it can restrict it to ten days, or one day; if it has the vested right to provide for per diem compensation for fifty days, it can provide for only one day, or for no compensation. It is admitted by the very able lawyers holding a contrary view, that if the General Assembly had made no provision for the payment of any compensation to the members and officers, clerks, or for stationery printing, and all other things proper and necessary to enable the Convention to perform freely and according to its own best judgment and discretion the duties imposed upon it, that the Convention would have the power and authority to fix the compensation of the members of the treasury of the State. This is, therefore, an admission of the inherent power of the Convention to do so; and then can it be contended that the full exercise of this power by the Convention is forbidden, controlled and abrogated by a clause in this Legislative Act provid-

ing compensation for part only of the time? Is it not the correct doctrine and construction that the section fixing the per diem compensation of the members, being in harmony and consonance with the purpose and power of the Convention and the sovereignty of the people, should be held valid, and that the proviso thereto in the nature of a covert penalty, forbidding compensation for a longer time than fifty days, must be held invalid and void as being antagonistic to the power of the Convention and not in aid, but in antagonism to the sovereignty of the people. The people, and they alone, could, by their vote, peremptorily command that a Convention shall be held for the purpose of revising and amending the whole Constitution, and they alone elected and commissioned their delegates and vested them only with full power to do their work, and in the language of Section 7 of said Act, "To continue in session until they shall, by careful revision and amendment of the Present Constitution frame and adopt a revised Constitution for the State."

This was the purpose of the Convention, and this was the power and authority vested by the sovereign people in the members of the Convention. Where a general power is conferred, or a duty enjoined, every particular power proper and necessary for the full and free exercise of the one, or the careful performance of the other, is also conferred, and when a general power is possessed by a convention to perform a duty, it possesses, by implication every special power conducive to the proper performance of the duty enjoined, and the sole measure of the power is the extent and scope of the purpose to be accomplished—so it unmistakably follows that there was implied in this full, plenary and general authority, the particular power to pass any ordinance or resolution, proper and necessary to the full, free and "careful" exercise of the authority and to the faithful discharge of the duty. This power to do everything proper and necessary, fairly within the scope of the purpose of the Convention, so as to make the power effectual and to accomplish the purpose, is absolutely conferred by implication, and any restriction upon this implied power is as completely void as a restriction on the granted power, and any restriction and limitation antagonistic to the accomplishment of the duty imposed by the General Assembly must necessarily be invalid, void and of no effect. Every restriction and limitation and provision imposed by the General Assembly antagonistic to this right of the people to have their delegates freely and fully and carefully and deliberately perform their duty untrammelled and unhampered, and finish their work of "careful revision of the present Constitution, and of framing and adopting a revised Constitution for the State, must be held null and void as in excess of the power and authority of the General Assembly of Alabama. It therefore follows that the regulation so far as it provides for the per diem compensation of the members is valid, but the proviso thereto "that per diem compensation shall not be allowed or paid to any member of the Convention for a longer time than fifty days" must be held void and thus leaving in force the other provision for compensation for the whole time the Convention is in session.

It is, however, insisted that the Convention cannot provide for the payment out of the Treasury of this per diem compensation, because such pro-

vision would be in contravention of Section 33, Article IV (Legislative Department) of the Constitution of this State, to wit: "That no money shall be paid out of the treasury except upon appropriation made by law and on warrant drawn by the proper officer in pursuance thereof," and it is contended that this means that it must be by statute enacted by the General Assembly of Alabama—that a bill must be introduced in the General Assembly and passed in compliance with the requirement of the Constitution for the passage of an act of the General Assembly and **must be approved** by the Governor, and that as the Convention is but one body, and cannot comply with these requirements of the Constitution, it has no powers of legislation. I have been unable to find any direct adjudication by the courts on this question, but have found some dicta in opinions which, arguendo, tend to sustain this contention; and Mr. Jameson fails to cite any such direct adjudication of the courts to this effect. He does, however, give the three opinions respectively of the Attorney-Generals of Georgia, New York and Pennsylvania against the power of the Convention to appropriate money out of the treasury to payment of compensation to members of convention and clerks et al., and for printing, and for stenographic reports.

These States had provisos in their Constitutions similar to said Section 33 of Article IV of the Constitution of Alabama; but the Constitution of all these States in force at the time of the rendition of these opinions did not contain the same provisions as to amendments of the Constitution by Conventions as those of this State; and their arguments were based on the assumption that such appropriation was vested solely in the Legislative Department, and that a statute must be passed according to the form prescribed by the Constitution and that the legislature had the authority under these Constitutions to restrict the exercise of the powers of the Convention. It is not a full and correct statement of the law to say that a Constitutional Convention possesses no legislative power? In the language of the decision of *Goodrich vs. Moore*, 2 Minnesota, p. 61, "A Constitutional Convention is the highest legislative assembly recognized by law, and has full control of its proceedings and may provide in any manner it sees fit for the perpetuation of the record of its proceedings." "A constitution which fixes and defines a right may exercise legislative power in providing the means for its enforcement."

*Schirley vs. First National Bank*, 47 Ill. Ap., 124.

A Constitutional Convention exercises the highest legislative powers for it enacts, ordains and declares the fundamental law of the State; and the precedents conclusively show that such conventions have time and again exercised legislative powers in the enactment of ordinances, resolutions and schedules to provide for and against temporary contingencies and to meet the changed conditions necessitated by revisions, amendments and alterations in the existing Constitution, and of the necessity the Convention is the best judge and to its judgment and discretion it must ex necessitate be left. From the very necessity of the case and the uncertainty of the fact that existing laws can meet every contingency, or answer every condition and demand, a Constitutional Convention must have the power to enact laws required by



the duty imposed on it and to enable it to discharge the trust reposed and to provide for the very changes made in the fundamental law. The Constitution of 1875 passed a law and placed same in the schedule, changing the provision of the act providing for the call of the Convention by repealing in part and amending Section 12 of said act as to certain proclamations required to be made by the Governor and the publication of the copy of said Constitution which, by his proclamation was to be submitted to the people for ratification. The Constitution does not say that in pursuance of a statute, or a law, but "in pursuance of law," and when the Convention ordains or declares that anything shall be done within its power then this is a law, and any act directed to be performed thereunder is in pursuance of law.

It is held, and it is admitted by the learned lawyers differing with me in this opinion, that when a Constitution declares the amount to be paid an officer, such declaration constitutes an appropriation made by law, and no subsequent act was necessary to its payment out of the treasury.

6 Am. & Eng. Ency. of Law (2d Ed.), p 914 and note 7; *State vs. Weston*, 4 Nebraska, p. 216; *Thomas vs. Owen*, 4 Maryland, p. 189.

This settles the fact and law that the Convention has the vested power to make appropriations and that appropriations made by it is in pursuance of law, and the form and place—whether in the Constitution or in an ordinance, or in a resolution or declaration, must depend upon its character—whether fundamental, or permanent, or temporary, and upon custom and precedent and the rules of procedure adopted by the Convention.

A resolution of this Convention requiring the Constitution to submitted to a vote of the people need not be placed in the Constitution, or the schedule thereof, and is a binding law, and it certainly is not required that this resolution should be submitted to the people for ratification. But it is insisted that such an ordinance must, under this resolution be submitted to the people for ratification before it can become a law and that such an appropriation would not be "in pursuance of law, until ratified by the people. The inherent power to enact a law, in the first instance is not dependent on a subsequent ratification.

There is one case holding that when the Constitution must be ratified by the people an ordinance to be valid must be submitted to the people and ratified by them.

89 Texas, p. 376.

This is contrary to precedent and custom and, I think, is unsustained by reason and authority. It is the custom to submit only the Constitution for ratification, and it is the generally accepted doctrine that a ratification of the Constitution is a ratification of all ordinances, and that this is required to validate only ordinances of a permanent and lasting character. This is not necessary to render valid as law, ordinances passed to meet exigencies, or that are simply temporarily required to enable the Convention to discharge its full duty, and the duration of which temporary law will terminate with the final adjournment of the Convention. Assured an ordi-

nance providing for the of the publication, printing, stationery, stepographic report and payment for the same, and of the per diem compensation of members of the Convention is a valid enactment of a temporary nature, necessary to the existence of the Convention and to the enabling of the Convention to discharge carefully and faithfully its duties. It cannot be insisted that such an ordinance must be subsequently ratified by the people either on special submission or by ratification of the Constitution, after its vitality has been exhausted—its life departed—a dead law—having expired with the final adjournment of the Convention.

In this connection I desire to call your attention to the able opinion of the court in the case of *Commonwealth ex rel Elkin vs. Griest* 50 L. R. A. supra, where the doctrine is maintained that as the provisions of the Constitution for revisions and amendments of the Constitution are in an article separate and distinct from that of "Legislative Department" that the provisions of the article under the head of "Legislative Department" are not extended, or referable to the article under the head of "Amendments of the Constitution;" and that the revision and amendment of the Constitution is a separate and independent work by a differently constituted body with higher and greater functions and powers and not governed or bound or limited by provisions of the article on "Legislative Department."

It is insisted that it is a dangerous precedent to lodge in the Convention the power to pay its own members and employes. In *Luther vs. Borden* 7 Howard (U. S.) p. 44, Chief Justice Taney says: "All power is liable to be abused when placed in unworthy hands." It may be pertinently asked in what worthier hands, or rather in hands less liable to abuse it, could this power have been placed than those of the chosen and selected delegates and representatives of the people recently elected by them and subsequently to the time of election of members of the General Assembly, and charged by them with the high, great and responsible duty of revising and amending the Constitution of their State. The people have placed on every member of the Convention the "imprimatur" of their trust and confidence in his worthiness. It should not be even insinuated that these delegates will betray this trust, or abuse this power by fixing their compensation beyond a fair, reasonable and just amount and contrary to precedent and custom regulating the rate of such compensation.

For the reasons given: It is my opinion that on the passage of a proper ordinance by the Convention fixing a reasonable per-diem compensation of the members of the Convention for the time in excess of the fifty days made payable out of the treasury, on proper certificates of the President and Secretary of the Convention to you as Auditor of the State, of the amounts owing and due the respective members as such per diem compensation, you can draw your warrant as Auditor on the treasury therefor, and payment should be made of the same out of the treasury as payments of the compensation to members of the General Assembly to be made.

Your attention is called to the following additional authorities in which the principles enunciated support this opinion:

Sproule vs. Frederick 69 Miss., p. 898; Lomis vs. Jackson 6 W. Va., p. 708; State vs. Neal 42 Missouri, p. 123; Goodwin vs. Neal 45 Ga., p. 109; Maloney vs. Roberts, 32 Texas, p. 136; in re Senate File 25 Neb. p. 864; opinion of Judges of the Supreme Court of New York, Appendix "D," Jameson on Constitutional Conventions, p. 665.

The New York Judges say in this opinion that such attempted restriction on the power of the Convention may operate by way of advice or recommendation only, and not as law.

Permit me to say that I have come to this conclusion after careful examination, and with much hesitancy by reason of my first impression in favor of the correctness of the contrary view and the propound regard I have for the ability and learning of the eminent lawyers holding a different opinion.

Most respectfully,

Charles G. Brown,

Attorney General.

Dictated.

MR. LONG (Walker)—I have a resolution, and I shall ask a suspension of the rules, and I respectfully invite the attention of the delegates to the reading of the resolution.

THE PRESIDENT—Delegates will please give attention to the reading of the resolution offered by Mr. Long (Walker.)

The Clerk read the resolution as follows:

Resolution No. 262 by Mr. Long (Walker.)

Whereas, from the action of this Constitutional Convention, it appears that any and all persons holding office of honor, trust or profit under the State of Alabama, are in the habit of accepting free passes from railroads, and are unduly influenced and corrupted thereby,

And whereas, the members of this Convention, are holding their office as such member under this State, and may, by reason thereof, be liable to be influenced or corrupted by accepting free passes for themselves, friends and families, therefore,

Be it resolved, That the secretary of this Convention be and he is hereby ordered immediately upon the passage of this resolution to call the roll of the delegates of this Convention, and as his name is called, each member of this Convention shall rise in his seat and answer the following questions, which shall then and there in open session of this Convention be propounded to him by the secretary, the answers to which shall be recorded by the Secretary in the journal of this Convention, the questions to be as follows:

First—Have you a pass or passes now in your possession, or under your control, or at your command. If so, then over what railroad company's road? What is the consideration for which said passes was issued?

Second—Since you were elected to this Constitutional Convention, have you accepted a pass for yourself, or friend, or family or any member thereof, and if so, then state for whom and what was the consideration thereof? Why was such pass issued? What railroad company issued such pass or passes?

Third—Has the issuance or acceptance of said pass or passes, influenced you directly or indirectly in any vote you have cast as a member of this Convention, or has it corrupted any of your actions during this Convention, or if not, would it corrupt the action of others, or influence their votes?

Resolved further, That immediately after the reply to the above question, each delegate as he completes his answer shall hand to the Secretary any and all passes now in his possession, whether trip or annual. Such of said passes as on their face are shown to be issued to employee only shall be returned to the holder and all others shall be retained by the Secretary and placed among the archives of this Convention, and the journal shall show from whom the same was obtained and the substance thereof.

Resolved further, That all delegates who have accepted passes for themselves, family or friends, not employes, shall surrender to the Secretary of this Convention, who shall pay it into the State Treasury, enough of their mileage and per diem as shall be sufficient to cover the passes issued based on 3 cents per mile.

Resolved further, That as the Secretary interrogates each member under this resolution, he shall swear such member to tell the truth, the whole truth and nothing but the truth in answer to such of said questions as member of this Convention may propound to him touching the acceptance in the past by him, for himself, friends or family of a free pass.

MR. LONG—I move that the doors be closed, and that the resolution be put upon its passage immediately, and I move a suspension of the rules, and call for an aye and nay vote.

The call for the ayes and noes was not sustained.

THE PRESIDENT—As many as favor the motion to suspend the rules will say aye and those opposed no. The noes have it, and the resolution will be referred to—

A division was called for.

MR. LONG—I want a division, I want to see how many members are in favor of it.

MR. HEFLIN (Chambers)—I rise to a point of order. The President had announced the result.

MR. LONG—I ask that it go to the Committee on Rules, and that they be requested to report it back here in some shape.

THE PRESIDENT—The resolution will be referred to the Committee on Corporations.

MR. MERRILL,—I have an ordinance I desire to introduce.

The Secretary read the ordinance as follows:

Ordinance 428 by Mr. Merrill:

Be it ordained by the people of the State of Alabama in convention assembled.

That no railroad or other transportation company nor officer nor employee thereof shall grant free passes or sell tickets or passes at a discount other than as sold to the public generally to any member of the Legislature or to any person holding office under this State, and any railroad or other transportation company or officer or employee thereof who violates the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined \$500 one-half of which fine shall go to the informer, and the other half to the county in which the conviction is had.

Referred to Committee on Corporations.

MR. SLOAN—I have a petition which I desire to present to the Convention.

THE PRESIDENT—Petitions under our rules are not read before the Convention unless the Convention directs. It will be referred to the proper committee.

MR. SLOAN—I ask that the body of the petition be read.

The Convention gave its assent to the reading of the petition and it was read by the Clerk as follows:

Petition No. — by Mr. Sloan.

To the Honorable Constitutional Convention, Montgomery, Alabama.

Dear Sirs:—We respectfully represent that whereas the Railroad Commission appointed by the Governor and paid by the railroads has proven an entire failure and whereas the shipper and consumer should have some representation in the naming of rates and making of rules by what is otherwise alien and arbitrary powers. That whereas the express, telephone, telegraph and railroad franchises are given by the State. We therefore request your honorable body that you will give us a commission, elected and paid by

the people and place all franchises, which have power to tax, within their review.

C. R. Smith, farmer; John Membourn, W. J. Beam, J. R. Covington, teacher; J. A. Jackson, W. J. Jackson, farmer; J. E. Bolden, farmer; J. B. Burnem, farmer; James Burton, farmer; J. M. Lowry, farmer; John Morgan, farmer; C. V. Burton, farmer; John C. Morton, farmer; F. A. Binter, farmer; D. R. Cochran, farmer; G. W. Daden, attorney; W. S. Miller, farmer; J. R. King, farmer; G. E. Crawford, farmer; J. C. King, farmer; M. R. McElvina, farmer; R. F. Trowell, farmer; T. C. Whited, farmer; James Carnes, farmer; W. L. McCorkle, merchant; W. M. Self, Superintendent Education; T. G. Whaley, teacher; B. V. Todd, farmer; G. D. Jones, farmer; I. R. Sparks, farmer; G. S. Weston, farmer; B. C. Clements, farmer; D. A. Robertson, farmer; J. W. Snider, farmer; James Kent, farmer; T. J. Murray, farmer; R. M. Townby, farmer; G. T. Read, farmer; J. T. Whitley, farmer; J. M. Hitt, farmer; J. D. Hod, farmer; J. H. Donehoo, merchant; Johnson Gunter, farmer; J. I. Collett, farmer; W. J. Norman, farmer; L. F. Wadsworth, farmer; J. W. Crawford, farmer; W. F. Wilmont, farmer; F. M. Armstrong, farmer; John B. Armstrong, farmer; Joe H. Ashley, farmer; Sam Sanders, ex-Sheriff; W. C. Howell, farmer; T. J. Weston, farmer; W. J. Young, farmer; Ed Graves, Sheriff; J. H. Vann, minister; E. B. Roberts, hotel keeper; F. J. Duke, farmer; M. M. Bucker, farmer; S. W. Bolton, J. R. Hatchcock.

J. A. Gelner, farmer; J. N. Bolton, attorney; A. A. Griffith, attorney; E. R. Daughdrill, attorney; K. W. Daughdrill, mechanic; Geo. P. Dickinson, teacher; P. B. Bynum, clerk; J. F. Kelton, clerk court; Emory C. Hall, attorney-at-law; J. C. Bynum, mill man; P. E. Murphree, farmer; W. R. Bynum, farmer; O. P. Walker, miner; H. C. Barwich, miner; J. P. Tidwell, mill man; D. B. Wood, farmer; M. C. Murphree, postmaster; B. B. Cornelius, farmer; Alfred Iverson, farmer; J. M. Tyler, farmer; A. B. Dickson, farmer; W. W. Bain, farmer; E. H. Smith, blacksmith; J. E. Bynum, retired merchant; C. M. Brown, farmer; W. E. Secrov, farmer; William Gurley, farmer; Louis Gurley, farmer; C. C. Newson, farmer; S. A. Johnson, farmer; M. M. Jones, photographer; H. J. Mases, farmer; W. A. Hood, farmer; W. T. Kemp, city clerk; W. A. Taylor, teacher of public school; M. M. Gilbreath, farmer; L. T. Chitwood, farmer; T. B. Russell, attorney; R. Nation, tax collector; W. D. Samuel, barber; M. M. Owens, farmer; Peter Clements, farmer; J. M. Saddler, farmer; S. G. Clement, farmer; W. M. Newson, farmer; L. Adcock, farmer; L. H. Brown, probate clerk; E. C. Alldredge, sheriff; Thos. B. Deerer, county treasurer; J. B. Morris, farmer; W. L. Hendricks, minister; W. B. Tidwell, carpenter.

To the same petition were added these names:

J. A. Brice, merchant; J. S. DeLucke & Co., merchants; C. C. Hullett, farmer; W. M. Morton, farmer; J. H. Gillie, farmer; Jno. Adams, farmer; E. S. Jones, farmer; W. B. Self, farmer; M. A. Walker, farmer; Olive Walker, farmer; J. T. Crumbley, farmer; Jo. F. Wilson, county solicitor, Blount County; G. D. Shelton, merchant; S. L. Tidwell, farmer; A. J. Pulman, farmer.

Referred to Corporations Committee.

The next order of business was the call of the roll for reports of committees.

MR. SMITH (Mobile)—I desire on behalf of the Committee on Rules to return two resolutions, in order that they may be referred to the Committee on Engrossment.

The Clerk read the resolution as follows:

Resolution No. 195, by Mr. Carmichael of Colbert:

Resolved, by the Convention that the Engrossing and Enrolling Clerk of the Convention be and the same is hereby authorized to employ such assistants as may be necessary to properly discharge the duties of that office. This resolution shall take effect on and after the 24th day of June.

The Clerk read resolution 199, as follows:

Resolution No. 199, by Mr. Howell:

Resolved, That whatever clerical assistance may be necessary to be employed by the Enrolling and Engrossing Clerk of this Convention, it be paid for at the rate of fifteen cents per hundred words for such assistant clerical work.

MR. SMITH (Mobile)—The Committee on Rules beg leave to report the following resolution.

Resolution No. 255, by Rules Committee:

Resolved, that the rules of the Convention limiting debate be suspended when the report of the Suffrage Committee is taken up for consideration, and that each delegate be allowed to speak once, and not longer than thirty minutes upon any proposition presented by the report of the Committee or any amendment thereto, except that the Chairman of the Committee or mover of the amendment, or such delegate as such Chairman or mover may yield his time to, may, after the previous question has been ordered, close the debate, and in so doing may speak for a like period of thirty minutes; provided, that the time here limited may be extended by a majority of the delegates voting without a suspension of the rules.

MR. JONES—I ask that that rule be printed and lie over until Monday. I cannot understand it, it was read so rapidly.

MR. O'NEAL.—At the request of the Chairman of the Committee, I presented that resolution on yesterday.

THE PRESIDENT—It is the recollection of the Chair that it is the identical resolution.

MR. SMITH—I was informed that he had not. I ask to withdraw the resolution.

THE PRESIDENT—The gentleman asks unanimous consent to withdraw the resolution. Is there objection? The Chair hears none.

MR. LOMAX—I have an ordinance I desire to introduce.

The Clerk read the ordinance as follows:

Ordinance No. 429 by Mr. Lomax:

An ordinance to repeal Section 5 of the Article on Legislative Department as reported to and adopted by this Convention.

Be it ordained by the people of the State of Alabama in Convention assembled, that Section 5 of the ordinance reported by the Committee on Legislative Department, fixing the sessions of the legislature quadrennially be, and the same is hereby repealed.

Referred to Committee on Legislative Department.

MR. WILSON (Clarke)—The Committee on Military report the following article:

The Clerk read the report of the Committee as follows:

1.—All able bodied, white male inhabitants of the State, between the ages of 18 years and 45 years, who are citizens of the United States, or have declared their intention to become such citizen, shall be liable to military duty in the militia of the State; and the General Assembly may provide for the organization from among such citizens of a State Naval Militia.

2.—The General Assembly, in providing for the organization, equipment, and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

3.—Each company and regiment shall elect its own company and regimental officers; but if any company or regiment shall neglect to elect such officers within the time prescribed by law they shall be appointed by the Governor.

4.—Volunteer organizations of infantry, cavalry, and artillery may be formed in such manner, and under such restrictions, and with such privileges, as may be provided by law.



5.—The militia and volunteer forces shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at musters, parades and elections, and in going to and returning from the same.

6.—The Governor shall, except as otherwise provided herein, be commander-in-chief of the militia and volunteer forces of the State, except when in service of the United States, and shall, with the advice and consent of the Senate, appoint all general officers whose term of office shall be for four years. The Governor, the generals, and regimental and battalion commanders shall appoint their own staff, as may be provided by law.

7.—The General Assembly shall provide for the safe keeping of the arms, ammunition, and accoutrements, military records, banners and relics of the State.

8.—The officers and men of the militia and volunteer forces shall not be entitled to, or receive any pay, rations or emoluments when not in active service.

THE PRESIDENT—The ordinance reported by the Committee will lie upon the table and printed under the rule.

MR. CARMICHAEL (Colbert)—I move that so much of the Journal as relates to the action of the Convention on the amendment offered by the gentleman from Dallas be read.

The motion was adopted.

The Clerk read from the Journal as follows:

“Mr. Burns offered the following amendment to Section 38:

“Amend Section 38 by adding after the word ‘reward’ in the third line, the words ‘free pass.’”

MR. GREER of Calhoun moved to table the amendment offered by Mr. Burns.

The motion prevailed and the amendment of Mr. Burns was laid upon the table.

Mr. Pillans made the point of order that before the vote was put to the Convention he was upon his feet demanding that a yeas and nays vote be taken.

THE PRESIDENT (Mr. Harrison in the Chair)—Stated to the gentleman from Mobile, Mr. Pillans, that he did not hear his demand owing to the confusion in the hall, but that he would ask unanimous consent of the Convention to order the yeas and nays taken upon the motion to table the amendment.

Thereupon Mr. Cofer made the point of order that the matter and substance contained in the amendment was *res adjudicata*,

having been heretofore acted upon by the Convention, and that said amendment was therefore out of order.

The point of order was sustained.

Mr. Jones of Montgomery, appealed from the decision of the Chair.

On motion the Convention decided to remain in session until the pending question, the appeal from the decision of the Chair, was disposed of.

Mr. Greer of Calhoun, raised the point of order that before the Convention could decide to remain in session, beyond the hour of adjournment, under the rules, the rules would have to be suspended.

The President (Mr. Harrison) overruled the point of order.

The question recurred upon the appeal from the decision of the Chair.

The question being shall the Chair be sustained, the Chair was not sustained, by the following vote, yeas 30, nays 61.

MR. LONG (Walker)—In the stenographic report of yesterday on the resolution introduced by myself, the stenographic report reads as follows:

“THE PRESIDENT—The question before the Convention is the consideration of the report on journal.

“MR. LONG—Before that is made, I want a correction in the journal, as well as the stenographic report, and make a motion with reference to it.

“THE PRESIDENT—Does it relate to the part of the journal now read.

“MR. LONG—Not that particular part.

“THE PRESIDENT—The gentleman will proceed.

“MR. LONG—The stenographic report on the resolution offered by myself said: ‘Mr. Long (Walker)—I ask that the resolution be referred to Mr. White.’ I did not make any such statement. I asked that it be referred to the Committee on Preamble and Declaration of Rights.

THE PRESIDENT—The official stenographer will make the correction.

MR. CARMICHAEL (Colbert)—I move that the report of the Committee on Journal be adopted.

MR. JONES (Montgomery)—I move to strike out that part of the minutes that show that the motion to table was adopted—that

part of the journal which shows that the motion to table the amendment offered by the gentleman from Dallas was adopted. I want to say in support of that motion that there was a great deal of noise and confusion at the time the gentleman moved to table the proposition. I am satisfied that the chair, the temporary President, at that time, thought that the matter was a joke on the part of the gentleman from Dallas, and was paying no attention to it, and he stated that the motion was tabled. In the lightning rapidity with which he was going on at that time, without knowing what the facts were. The facts are members of this Convention were on their feet, demanding an aye and no vote, and the chair, inconsiderately, thinking it amounted to nothing, said it was laid upon the table, but afterwards, on demand of Mr. Pillans, and by consent of the House, the ayes and noes were called on that after the motion was said to have been laid on the table, and the chair ruled on the point of order raised by the gentleman from Cullman that it was not germane and was *res adjudicata*. The chair ruled on that, that it was out of order, not on the ground that it was tabled, but on the ground already stated. I am satisfied, from recollection, and I am further satisfied from what I have been informed, that the clerk made the entry, because the chair announced, in his rapid way, thinking the whole matter was a joke, that it was laid upon the table. A great many of us know that this House was overwhelmingly opposed to that, and we were surprised to find that the amendment had been laid upon the table. That is the reason I move to strike out that part which shows it was laid upon the table.

MR. CARMICHAEL (Colbert)—I was present yesterday afternoon when this matter was up and I desire to state the recollection I and the other members of the Journal Committee have as to what transpired at that time. Section 38 of the Legislative Department was under discussion. The member from Dallas prepared an amendment by which he proposed to insert "free passes" in this section. The amendment was sent to the Secretary's desk, the amendment was read, and the President presiding put the motion as to whether the amendment should be adopted or not. The gentleman from Calhoun, Mr. Greer, at that time moved to table the amendment of the gentleman from Dallas, and on that motion the House voted. The President presiding decided that the amendment was tabled. I think members who are here will remember that this is what happened. At that time the gentleman from Mobile, Mr. Pillans, was insisting that he was on the floor calling for an aye and no vote, but the fact is that the President pro tem. of the Convention had decided that the amendment was tabled at that time. When the gentleman from Mobile was insisting that he had occupied the floor calling the ayes and noes, the President, in an effort to conciliate the Convention, asked unanimous consent that an aye and no vote be taken, but unanimous consent was never

given, and the President never decided that unanimous consent was given to the taking of an aye and no vote. Thereupon, as the Journal shows, the gentleman from Cullman, Mr. Cofer, raised the point of order that it was *res adjudicata*, and the President decided in favor of the point of order, and upon that the gentleman from Montgomery took his appeal. In support of that, if you will look at the stenographic report, you will see that the stenographic report supports the report of the clerk of this House. I read from the stenographic report—it is on the fourth page, the last column on the fourth page: "The secretary thereupon read the amendment offered by Mr. Burns of Dallas as follows: 'Amend Section 38 by adding after the word 'reward' in the third line, the words 'free pass.'" Now, the fact is, that the chairman never did recognize nor see Mr. Pillans, but he declared the motion to table carried. Mr. Pillans then said, "I call for the ayes and noes. The chair declared the motion to table carried."

MR. JONES (Montgomery)—May I ask the gentleman a question?

MR. CARMICHAEL—Certainly.

MR. JONES—As I understand, the journal does not show that the temporary chairman, with the consent of the House, took an aye and no vote.

MR. CARMICHAEL—No, sir, and the President never did.

MR. JONES—I want to call the gentleman's attention to it. At the head of the first column on the fifth page: "If the Chair had heard the gentleman he would have put the question over, and the Chair will ask now to be permitted to do so and that gentleman be allowed to make the point he was about to make. There being no objection, the leave was given." Then Mr. Pillans goes on to state that he was satisfied the Chair has not heard him, and some colloquy took place, but Mr. Pillans kept insisting that he had demanded the ayes and noes. While that question was pending and the journal does not state it correctly, Mr. Cofer says "I rise to a point of order, that this is not germane and it has been defeated by this House of different occasions, and has been settled. Then the President pro tem said: "The Chair rules the point of order is well taken." It seems to me, Mr. President, that the Journal does not exactly describe what took place, when the President is put in the attitude of ruling a thing out of order which according to the Journal was on the table, when in the subsequent proceedings the consent of the House showed it was treated as a matter before the House. That is my objection to the Journal as it stands; it ought to be fuller about the tabling, or taken out altogether.

MR. CARMICHAEL—The motion of the gentleman from Montgomery that that be stricken out—I say that it is not within

the power of the President of this Convention to strike out anything. A vote was taken on this amendment, the motion to table this amendment, the President of the Convention, whether rightly or not, declared that that motion prevailed, and that that amendment was tabled. Now I submit, Mr. President, that after that it was not within the power of the President of this Convention, in his good humor or in his desire to conciliate this Convention, to abrogate that action of the Convention, and I submit that the President of this Convention never did submit the question to the Convention as to whether there was unanimous consent that this vote be taken by ayes and noes. Now, the motion of the gentleman from Montgomery is to strike out the action of this Convention. This could not be done except upon a motion to reconsider, and the President of this Convention, even if he undertook to do so, could not abrogate the action of this Convention.

MR. DENT—I would like to ask a question.

MR. CARMICHAEL—Yes.

MR. DENT—What becomes of this part of the stenographic report that actually took place—it being next over the to the last column, before you strike the blank page: "President pro tem—That is the recollection of the present occupant of the Chair, and the Chair will state further that so far as the demand of the delegate from Mobile for the ayes and noes, the Chair did not hear him. If the Chair had heard the gentleman, he would have put the question over, and the Chair will ask now to be permitted to do so and that the gentleman be allowed to make the point he was about to make. There being no objection, the leave was given."

MR. CARMICHAEL—I will say that that was interpolated by the stenographer and was not correct.

MR. PILLANS—I think he is wrong there. May I ask at whose instance it was interpolated?

MR. CARMICHAEL—It was not interpolated at the instance of any delegate, and I did not say that, but the stenographer put that down in his notes, not as a matter that occurred, but simply wrote that in his notes. There was some confusion and the President never did ask this Convention whether there was unanimous consent that the vote be taken by ayes and noes. I would have objected.

MR. ASHCRAFT—May I interrupt the gentleman for the purpose of asking a question?

MR. CARMICHAEL—Yes sir.

MR. ASHCRAFT—Look next to the last column, you will see I rose to a point of order, and stated that when the President put

the vote on the motion to table the amendment by the gentleman from Dallas, as soon as the question was announced, the gentleman from Mobile began to demand the ayes and noes, but the Chairman, not hearing him, proceeded until, as the Clerk's records show, he had announced that the vote had carried, thereupon the gentleman from Mobile was heard by the Chair and the Chair by unanimous consent proposed to repeat the question, and thereupon the gentleman from Calhoun made the point of order that the question was *res adjudicata*, having been passed upon at a previous hour. The Chair sustained the point of order made by the gentleman from Montgomery appealed from the decision of the Chair. The President *pro tem* said: "That is the Chair's recollection of it."

MR. CARMICHAEL—Yes, sir.

MR. ASHCRAFT—Don't that confirm that part that the gentleman from Mobile calls your attention to?

MR. CARMICHAEL—No, sir; what I submit is this, that the President of this Convention never did submit the question to this Convention as to whether there was unanimous consent. Now, after he had declared that the amendment was laid upon the table, the President then presiding said that he would like to remedy the wrong if any was done, in substance that he had not seen the gentleman from Mobile, and that he would like unanimous consent to be given, but he never did ask is there unanimous consent? Shall the vote be put by ayes and noes, is there objection? I submit that no man will insist that that motion was put in that manner. There are those here who would have objected to such a proposition. I wish to read further on, next to the last column in the last line. The Chair goes on to say: "The Chair did not hear him—having reference to the gentleman from Mobile. If the Chair had heard the gentleman, he would have put the question over, and the Chair will ask now to be permitted to do so and that the gentleman be allowed to take the point he was about to make." "There being no objection—these are the words of the stenographer, but the Chairman never stated that—there was no adjudication on the part of the President of the Convention that there was no objection, and that unanimous consent was given.

MR. HARRISON—Was there not at the time, half a dozen or more on the floor?

MR. CARMICHAEL—There were a dozen on the floor.

MR. PILLANS—I think perhaps you will recollect with me that the unanimous consent occurred in this wise. I was insisting upon the ayes and noes, and my insistence was not heard among the confusion, beyond a doubt by the acting President—stated there was an objection by the gentleman from Calhoun that I could not be heard from because I was not in my seat?

MR. CARMICHAEL—Yes, sir.

MR. PILLANS—Then didn't the acting President say in the interest of fairness, with a desire to be fair—I don't know about the stenographic report—but substantially he would put the question to the Convention whether they would give unanimous consent for the gentleman from Mobile to insist upon the call from the seat that he was then occupying, and was not that the matter of unanimous consent spoken of here now and perhaps in the stenographic report. Wasn't it then the unanimous consent was given? There was no objection and the acting President declared that there was unanimous consent that I should be heard from, or the gentleman from Mobile be heard from the seat I was then occupying?

MR. CARMICHAEL—That is true.

MR. PILLANS—Then didn't the acting President announce that he would put the question upon the ayes and noes, and just then there was an interruption from the gentleman from Calhoun with his point of order. Is not that the fact?

MR. CARMICHAEL—The facts are stated in the journal as they occurred. As to unanimous consent being given to make a point from where he was sitting is correct, but the point I make is this, that the amendment was tabled in fact by this House and so declared by the President, and that could not be abrogated except by reconsideration. The further fact is, and I insist upon this, that the President of this Convention never did submit the question as to whether there should be a vote taken by ayes and noes for unanimous consent of this house, and this house never did give unanimous consent for the passage of that amendment by ayes and noes. Now, I shall read from the stenographic report on the last page: "If the Chair had heard the gentleman (that is, the gentleman from Mobile) he would have put the question over, and the Chair will ask now to be permitted to do so and that the gentleman be allowed to make the point he was about to make." The stenographic report says: "There being no objection, the leave was given," but there was no adjudication by the President of this Convention.

MR. PILLANS—I respectfully say that I knew the Chair did not hear me—that he knew that he did not hear him, but the instant the question was stated and he called for the ayes and noes, the President pro tem asked, "Upon what question?" Does that show that we had given permission, that the matter was adjudicated? He said he would have to put the question over again—that was a statement made by the President at that time. Further on, "Mr. Pillans—And I immediately demanded the ayes and noes upon that question." He does not deny that the amendment was tabled. Now, the President says: "In order that no injustice may be done, the Chair asks that the call for the ayes and noes be

put." Now hadn't it been adjudicated at that time? Why does he ask that? I will read further: "Mr. Reese—I rise to a point of order. The gentleman from Dallas, my colleague, offered this amendment, and he never had surrendered the floor." Mr. Reese says, Mr. Pillans never had been on the floor insisted that he had never occupied the floor for any purpose, he said Mr. Burns from Dallas had occupied the floor all the time. Then the report goes on down: "The Chair asks consent of this Convention that the Convention now act upon the call for the ayes and noes demanded by the delegate from Mobile." Right there Mr. Cofer said: "I rise to a point of order, that this is not germane and it has been defeated by this house on a different occasion and has been settled." Then the President pro tem. said: "The Chair rules the point of order is well taken.

MR. JONES—Could the Chair have ruled a thing out of order that was on the table if he had not considered the proceedings as tantamount to unanimous consent?

MR. CARMICHAEL — The Chairman of the Convention, amidst the confusion that existed at the time, was endeavoring to get the Convention to allow an aye and no vote to be taken as requested by the gentleman from Mobile, but the Convention had never agreed to that, as all this will show. The lost statement made by the Chair is this: "The Chair asks consent of this Convention that the Convention now act upon the call for the ayes and noes demanded by the delegate from Mobile."

MR. O'NEAL—I rise to a point of order, the question before the Convention is the motion of the gentleman from Montgomery to amend the report of the Committee on the Journal. Under the rules of the house, the debate is limited to ten minutes, that is my recollection of the rules.

MR. PROCTOR—If the Chair recognizes the point of order of the gentleman from Lauderdale, I ask recognition to give my time to the gentleman from Colbert.

THE PRESIDENT—It seems to the Chair that the gentleman's time has expired.

MR. PROCTOR—I move that his time be extended.

The gentleman from Colbert yielded the floor to the gentleman from Jackson.

MR. PROCTOR—Some gentleman in the Convention desire things in the Journal which are not acted upon by the house. Whenever a result is announced by the Chair, it is the duty of the Journal to show that result, but anything that the Chair may say without any action by the house is not the action of this Convention, and consequently ought not to be in the Journal. When this



matter came up when the gentleman from Dallas offered the amendment, the gentleman from Calhoun moved to lay that amendment upon the table. Thereupon the President pro tem. put that question to this body, a vote was taken, and the result was announced by the Chair—not a decision from the Chair, but a decision of this Convention, consequently that was a matter that necessarily went into the Journal. Then whatever the Chair might have said of his own accord, without giving the Convention an opportunity to act on it, is not a question that should go into the Journal. I was present, and I was giving eye and ear to what was taking place, with no purpose to make any motion, and with no purpose to take any action but to vote when an opportunity presented itself. The gentleman from Mobile, all the time during the time the vote was being taken, when the motion was made, after the motion of the gentleman from Calhoun was made, was on his feet demanding the ayes and noes. The Chair never recognized the gentleman from Mobile until after the result was announced. After the result was announced, some complaint being made to the Chair that the gentleman was on his feet before the vote was put to the house, the Chair turned to the gentleman and made some remarks as if he would like to give an opportunity to vote on this question by the ayes and noes and he said by a unanimous consent I would like to out this. But I maintain, Mr. President, that that never was put to this body. Four or five gentlemen arose, this gentleman here and that one over there rising to points of order amid great confusion. I was there ready to vote if the opportunity offered, but it never was put, and whatever the Chairman announced without giving the Convention an opportunity to vote upon it, is a matter that should not go into the Journal, for the Journal is there to record only what transpires by the Convention and not by individual member nor by the Chair himself. I do not think that anybody will contradict that unanimous consent was never asked this Convention. The Chair announced his willingness if unanimous consent were given to put it to an aye and no vote, but I maintain that he never did ask this Convention to give unanimous consent.

MR. LOMAX.—Did not temporary President say that he did not hear the gentleman from Mobile, if he had heard him he would have put the question for the ayes and noes, and say I trust and I hope that this Convention will give its unanimous consent to do so? Didn't the Chair say that?

MR. PROCTOR.—The Chair made some remark like that.

MR. LOMAX.—Was there objection by anybody to that request by the Chair?

MR. PROCTOR.—That is the very point I am making.

MR. LOMAX—If there was no objection and the Chair had gone on and put that motion, would you say that he did not have the consent of the Convention to the doing of that thing? That is what happened here yesterday. He asked for consent and nobody objected, and that is the whole contention of the gentleman.

MR. PROCTOR—That is where we differ. He never asked consent. He said I would like to put this question, and probably it could have been done by unanimous consent, but he never asked if the unanimous consent was given by the Convention. He made some sort of statement as the gentleman from Montgomery states, but he never did give the opportunity to the Convention to say whether or not unanimous consent was given, and that is the very point I am making, because I was sitting there ready to vote whenever it did come up. I will read from the stenographic report: "Mr. Reese—I rise to a point of order. The gentleman from Dallas, my colleague, offered this amendment, and he never surrendered the floor. He was upon the floor and the motion was made to table, and immediately the gentleman from Mobile commenced demanding the ayes and noes, and he has had the floor ever since.

"THE PRESIDENT PRO TEM—The Chair has consented, and I believe the Convention will now consent, to put the call for the ayes and noes. The Chair does not agree with the last gentleman from Dallas, because there is a motion made by his colleague to refer the the amendment to the Committee on Corporations."

MR. LOMAX—Will you allow me? You commenced to read just four lines too low down.

MR. PROCTOR—I will read that: "Mr. Pillans—And I immediately demanded the ayes and noes upon the question.

"THE PRESIDENT PRO TEM—In order that no injustice may be done, the Chair asks that the call for the ayes and noes be put."

I maintain that that does not show that unanimous consent was asked or given.

MR. KYLE—Did you, or any of you make any objection to the call?

MR. PROCTOR—No, sir, because it never was put to the House to give me an opportunity to do so, that is the reason I did not object. I was sitting here ready to object, and here are the remarks in the stenographic report: "The Chair has consented"—but the Convention did not give the consent, and I maintain that it would not be a part of the Journal.

MR. COBB—Mr. President, sometimes it is a happy position to be in to know very little about the mysteries of parliamentary law. Now, there were certain things that did occur yesterday, and which no man disputes. One of those things was that after the time when it is stated that the motion to lay upon the table prevailed, this House took a vote that it would remain in session for another purpose, and a purpose inconsistent with the statement made in the Journal that that motion was laid upon the table. We took a vote upon the question as to whether we would remain in session here. For what purpose? For the purpose of deciding whether the temporary President of this Convention had ruled rightfully or wrongfully in sustaining the point of order made by the gentleman from Cullman. Now, when the appeal was made from the decision of the Chair, by the gentleman from Montgomery, and this Convention decided by solemn vote to remain in session until the question was decided, and when the Convention went on and entertained this appeal from the presiding officer of the Convention, when it was put to the Convention and voted upon by an aye and no vote, and nobody objected, is not that at least an indorsement of the action of the President in entertaining the motion made by the gentleman from Cullman? Now, then, if that action made in the face of the House, made with the consent of the House, made by a solemn vote of the House, and sustained as correct, if it conflicts, which is to prevail?

MR. HARRISON—I would like to ask a question? I will ask you if the Chair was not prevented from ever really submitting that matter to the House by the confusion that existed?

MR. COBB—Yes, sir; that is true. The chair was prevented and before he put the motion to the House relative to the action proposed by the gentleman from Mobile, the gentleman from Cullman interposed, and the point I make is the fact that he did not technically put that question to the House makes no difference. What has parliamentary law to do here among a Convention of gentlemen framing a Constitution, who intend to do right in framing it? Now, there is no use of shirking this question. It is before this Convention, and the question is free passes or no free passes and if this Convention have a fair show, they will determine and strike down free passes forever.

MR. OATES—I was in my seat and have in charge the section which was under discussion when the amendment was offered. I was necessarily a close observer of what transpired. During the confusion yesterday evening I tried three different times to get recognition to give what I saw and knew about it, which I thought would have some tendency to explain the situation. I will do so now, briefly. The amendment was offered by the delegate from Dallas, Mr. Burns, which has been stated, and it is not necessary to repeat it. At once there was a good deal of excitement, until

a motion was made by the delegate from Cullman to table the amendment and the vote was taken upon tabling the amendment. The presiding officer announced that it seemed to the chair that the ayes have it. That may not have been the precise language, but that is the substance of it. He is too good a parliamentarian to announce at once a result without giving any opportunity. He announced, however, that it seemed to the chair that the ayes had it, and just at that time the delegate from Mobile, who was occupying a seat over here where Delegate White now sits, was, and had been from the very moment of the announcement, demanding the ayes and noes. The attention of the chair was then directed to that part of the hall, several gentlemen being on their feet, and the gentleman from Mobile, Mr. Pillans, repeated his demand time and again, until he gained recognition, and then it was that the delegate from Calhoun made the point—that he could not make this demand because he was not in his seat. After that question was canvassed for a short time, the chair agreed or submitted the question whether he could not do it. I am not sure about whether any vote was taken, but the chair entertained it; said that if he had heard the delegate from Mobile, he would have recognized his demand for the ayes and noes on that vote, but that he had not been able to hear him, his attention was directed to so many occupants of the floor seeking recognition in another part of the hall, and he said he had no intention to do an injustice to any delegate, and he was disposed to grant the demand of the delegate from Mobile, stating he was on the floor making a demand for ayes and noes from the very moment when the vote was taken, and just at that time the occupant of the chair said he had no disposition to do anybody any wrong, and the delegate from Mobile said certainly he did not, and the chair stated about that time, "I will ask permission for unanimous consent that the demand of the delegate from Mobile for ayes and noes be put to the Convention, and just at that point, before it was done, the delegate from Cullman obtained recognition from the chair and interposed his point of order which the chair entertained, and decided and the appeal was taken from that decision. Those are the facts as I witnessed them and recollect them, and, without going into all the details, those are the essential facts of the case. Now, sir, it seems to me that while the vote had been taken and the chair had declared that it seemed to the chair the ayes had it, the final result had not been put; certainly his recognition of the delegate from Cullman, who interposed the point of order upon the identical question under consideration. The secretary had reported the truth that the motion had been to lay on the table had been carried, and the chair stated "it seems so to the chair," but the final result had not been put. If it had been, the point of order came too late, and the chair would have so regarded it, but as he had not announced the final result, the time had not passed, the oppor-

tunity had not gone by, for demanding the ayes and noes; he was disposed to recognize the delegate from Mobile in that demand, and his recognition of the point made by the delegate from Cullman showed that it was still in fieri and had not been fully determined.

MR. WILSON—The Committee on Journal simply endeavored to make the journal state what actually happened. If the delegates will leave out of their minds the question of what side they are on on this amendment proposed to this section, there would be very little trouble to settle the pending controversy. The proposition now is to strike from the journal the statement that the amendment was laid upon the table. As I understand the proposition—

MR. JONES (Montgomery)—Will the gentleman allow me to make a proposition that may probably coincide with the different views expressed here? After stating about the motion to table, the chair announced that the motion was tabled, but upon insistence of the gentleman from Mobile, Mr. Pillans, that he was on his feet demanding the ayes and noes before the chair put the question, the chair announced he had no disposition to infringe upon the rights of any member, and would put the vote by yeas and noes, but before that was done, Mr. Cofer made a point of order. I think that covered the case.

MR. WILSON (Clarke)—Mr. President, I do not think the journal should be encumbered with all that kind of stuff. As I said the journal shows the motion was made to table, that was put to the house, the house voted, and the chair announced the decision. The stenographic report shows the same thing. I submit to the delegates that those two sources are the best sources from which we can get information on this subject. Now, if the question was put to the Convention and the Convention voted upon it and the decision of the Convention was announced, why the gentlemen ought not to want to make the journal show that something else was done when that was done.

MR. CUNNINGHAM—Will the gentleman permit a question? Suppose the journal shows the manner in which it was tabled, that is by a viva voce vote. No one will question it was tabled according to the decision of the chair by a viva voce vote.

MR. WILSON (Clarke)—I will come to that proposition, and if you will wait until I get through and then want to ask anything I will answer you. Mr. President, I say the official stenographic report and journal agree on this proposition; the question was submitted and voted on and decision announced. Well, now, what do the gentlemen who want to strike out that provision say, they say the demand for the verification of the vote was made. Suppose it was. They say unanimous consent was given for certification of the vote. Suppose it was. No one will say it was verified and that

the motion to table was not carried or was reversed. I submit you have no right to strike out the decision in the face of such a proposition as that. None of them will deny the proposition to table was carried. They say the demand for ayes and noes was made, there never was taken a vote on the question of ayes and noes; therefore, upon what do they predicate their desire to strike out the decision of the Convention and to attempt to make the journal show that something that was done was not done. I submit that when this question comes up again, when this section is reached again, if unanimous consent has been given for a vote, for the ayes and noes, a vote can be taken. If, on yesterday afternoon, after the decision had been announced a delegate had asked for verification by aye and noes and unanimous consent was given for the certification, and the verification was never had, I think the Chair would hold that as unfinished business; if on the other hand, the Chair should hold that unanimous consent was not given for the vote by ayes and noes, but that that motion stands to table, why, then, I anticipate the Chair would entertain a motion to take from the table. So far as I am concerned I will vote for the journal as it stands, because that is the best evidence of what was actually done. I have no objection to the amendment, will vote for the amendment and tried to say so yesterday on the decision from the appeal of the Chair, when I was going to vote to sustain the Chair, because I believe the Chair was ruling honestly as he thought the President of the Convention had established a precedent, but the gentleman cut me off and would not permit me, therefore, I take this occasion to do it. I say we ought not because we happen to be on one side or the other of this question to try to make the journal show what did take place, did not take place.

I move the previous question on this matter. On the amendment and on the adoption of the report of the Committee on the Journal.

THE PRESIDENT—The question is on the motion of—

MR. JONES (Montgomery)—Mr. President, who has the conclusion on that? I made the motion.

THE PRESIDENT—The Chair will rule upon that question so soon as it submits the motion.

MR. JONES (Montgomery)—The reason I ask is—

THE PRESIDENT—The gentleman is not in order.

MR. JONES—But I can state a parliamentary inquiry.

THE PRESIDENT—The gentleman is not in order.

MR. JONES—I take an appeal from the decision of the Chair, if you will permit me.

THE PRESIDENT—The gentleman will please be seated.

MR. JONES—Now I am seated, and I now rise to take an appeal from the decision of the Chair.

THE PRESIDENT—The gentleman will please resume his seat.

MR. JONES—I have taken my seat in obedience to the orders of the Convention and then I have risen to respectfully take an appeal from the decision of the Chair to the members of this Convention.

MR. WILLETT—I rise to a point of order. The gentleman from Montgomery is out of order. The Chair has not stated the question that is before the Convention.

MR. JONES—My appeal is before the House. Does the Chair say that he will not put an appeal?

THE PRESIDENT — Is the gentleman from Montgomery the Chairman of the Convention or the occupant of the Chair?

MR. JONES—The gentleman from Montgomery is the peer of the Chairman of this Convention and will insist upon his rights.

THE PRESIDENT—The gentleman will please resume his seat.

MR. JONES—The gentleman from Montgomery declines to resume his seat until the Chair decides whether he will put an appeal which he took from the ruling of the Chair.

THE PRESIDENT—Unless the gentleman from Montgomery will resume his seat the Chair, under the rules, will have to request the Sergeant-At-Arms to require the gentleman to be seated.

MR. JONES—I understand that, but now do not let us have any unnecessary heat about this. I want to ask the Chairman of this Convention if a delegate on this floor has not the right to appeal from a decision of the Chair.

THE PRESIDENT—Certainly. Certainly he has but the gentleman has no right to defy the Chair, and the Chair requests him to be seated in order that the Chair may make a ruling. The gentleman has no right to defy the Chair and stand, in violation of the rules of this Convention, occupying the floor, after the Chair requests him to be seated.

MR. JONES—I respectfully ask if, after the Chair called me to order, I did not sit down and then respectfully rise in my place?

THE PRESIDENT—But the gentleman is now out of order, as the Chair has ruled he is out of order, and the Chair will request him to be seated.

MR. JONES—What becomes of my appeal?

THE PRESIDENT—The Sergeant at Arms will require the gentleman to be seated.

MR. JONES—I rise to a question of personal privilege. I have taken an appeal from the decision of the Chair, and I ask to have it put, and if the Sergeant at Arms or anybody else tries to make me take my seat when as a member of this Convention I have a right to take an appeal, why he only does it over my dead body.

MR. SANDERS—I move we adjourn.

MR. WILLIAMS (Marengo)—Point of order.

MR. BULGER—I as a delegate of this Convention, demand that the Sergeant at Arms discharge his duty.

MR. JONES—Suppose you try to do it.

THE PRESIDENT—The Sergeant at Arms will remove the gentleman from the Convention.

MR. JONES—I have a right to be heard, and I want to know if the Chair declined to put an appeal.

THE PRESIDENT—The Chair does not decline to put an appeal, but the Sergeant at Arms will require the gentleman to be seated.

MR. JONES—That is all I want. I want the Chair to put my appeal. Now, Mr. President—

THE PRESIDENT—The gentleman will resume his seat.

MR. JONES—I think if the Chair will hold its temper a little—

THE PRESIDENT—It seems to the Chair that it is the gentleman from Montgomery. The gentleman from Montgomery will please be seated.

MR. JONES—I was about to state—

THE PRESIDENT—The Sergeant at Arms will remove the gentleman—

MR. JONES—I rise to a question of privilege.

MR. FLETCHER—I do not think that one delegate in this Convention—

THE PRESIDENT—The Sergeant at Arms will exercise his duty or the Chair will appoint a Sergeant at Arms—



MR. FLETCHER (continuing)—should usurp the privilege of this Convention.

MR. JONES—I was about to state a question of privilege.

MR. FLETCHER—I have said nothing in regard to this matter, but I do not think that any one man has the right to usurp the privileges of this Convention and to retain the floor in this manner, and I think the member ought to be silenced.

MR. BURNS—I rise to a point of information. What is the question before the house?

THE PRESIDENT—The gentleman will please resume his seat. The Secretary will please state the question from which the gentleman from Montgomery appealed from the decision of the Chair.

The Secretary stated the question as follows:

Mr. Wilson of Clarke moves the previous question upon the adoption of the Journal and the pending amendment. Mr. Jones of Montgomery rises and asks that he be allowed to conclude the remarks being the mover of the amendment.

THE PRESIDENT—The Chair stated he would rule upon the privilege of the gentleman after submitting the question on the motion for the previous question to the Convention. Thereupon the gentleman from Montgomery appealed from the ruling of the Chair. The question is, shall the Chair be sustained?

MR. JONES—I do not think the Chair exactly states—

The gentleman was interrupted by vociferous calls for the question.

MR. JONES—I withdraw the appeal rather than be the occasion of disorder in this Convention.

There were loud cries for the question.

THE PRESIDENT—The Sergeant at Arms will remove the gentleman unless he resumes his seat.

MR. JONES—Haven't I the right to withdraw an appeal.

There were cries of "objection."

MR. JONES—I withdraw my appeal.

THE PRESIDENT — The gentleman cannot withdraw a question that has been submitted to the Convention. The question will be shall the decision of the Chair stand as the ruling of this Convention?

By a viva voce the decision of the Chair was unanimously sustained.

THE PRESIDENT—The question recurs upon the motion of the gentleman from Clarke for the previous question. The question is shall the main question now be put?

Upon a vote being taken the main question was ordered.

THE PRESIDENT—The question is upon the amendment offered by the gentleman from Montgomery to the report of the Committee on Journal.

MR. BULGER — I would like to hear the reading of the amendment.

THE PRESIDENT—It is not in writing. The motion, however, is to strike from the Journal so much of the Journal as shows that the amendment of the gentleman from Dallas was laid upon the table. As many as favor the amendment will say aye.

Upon a vote being taken the amendment was lost.

The question recurring upon the adoption of the report of the Committee on Journal, upon a vote being taken the report was adopted.

Mr. Dent obtained recognition.

MR. JONES—Will the gentleman yield?

MR. DENT—I yield to the gentleman from Montgomery.

MR. JONES—I desire, if the President will hear me, to state that, perhaps, from a misapprehension of what the attitude of the Chair was, I took action and probably said words, which, if I had not been under such misapprehension, I would not have done. I further desire to state to this Convention and the Chair that I endeavored to say this five or six minutes ago and the Chair would not permit it, and ruled that I was out of order. This was the purpose for which I rose the last time. I am the last man that would treat this House or its President, or any one with disrespect, and I am the last man, if I know that my rights are being violated to permit that it shall be done.

THE PRESIDENT — When the gentleman rises and addresses the Chair and makes a motion, the Chair will always entertain the motion and submit it to the Convention, but after the gentleman makes a motion or makes a point of order, or moves any question, it is in order for him to resume his seat, and to permit the Chair to state the question to the Convention. After the Chair calls the attention of the gentleman to the fact that he is out of order and requests him to resume his seat it seems to the Chair, that the gentleman is altogether out of order when he insists on maintaining his position on the floor while the President is proceeding to submit the question to the Convention. Therefore, the

Chair respectfully requested the gentleman from Montgomery to be seated, in order that the Chair might proceed to submit his question to the Convention, but the Chair cannot submit questions to the Convention when one or more or a half dozen gentlemen are on their feet clamoring for recognition, or interrupting the proceedings of the Convention. This is a Convention of delegates of the sovereign people of Alabama, and it is becoming that we should act with decorum and with dignity. The gentleman from Barbour.

MR. DENT—When the Convention had Section 35 under consideration, of the Article on Legislative Department—

MR. WALKER—I will ask the gentleman from Barbour to excuse me for one moment while I enter a motion. I move, Mr. President—

MR. DENT—I yield to the gentleman from Madison.

MR. WALKER—I move, Mr. President, that what has occurred in this House subsequent to the motion of the gentleman from Clarke for the previous question be expunged from the stenographic report.

MR. EVSTER—I move to table the motion.

Upon a vote being taken, a division was called for.

MR. HEFLIN (Chambers)—I make the point of order that you have to suspend the rules before a motion of this character can be put.

MR. SPRAGGINS—I make the point of order that the gentleman's point of order comes too late.

THE PRESIDENT—The question which the Chair submitted to the Convention was a motion to table. The question of the consideration of the resolution is not before the Convention at this time.

And by a vote of 40 ayes and 45 noes, the motion to table was lost.

MR. HEFLIN (Chambers)—I make the point of order that in order to present the motion of the gentleman from Madison, the rules will have to be suspended, and that will require a two-thirds vote.

THE PRESIDENT—It seems to the Chair that the point of order is well taken.

MR. GRAHAM (Montgomery)—I move that the rules be suspended, in order that the motion made by the gentleman from Madison may be adopted.

Upon a vote being taken a division was called for and by vote of 49 ayes and 38 noes, the motion to suspend the rules was lost.

**THE PRESIDENT**—The special order before the Convention this morning will be the consideration of the report of the Committee on Legislative Department. When the Convention adjourned it had under consideration Section 28.

**MR. DENT**—When Section 35 was under consideration yesterday, the gentleman from Pike, who is unfortunately absent this morning, offered an amendment to the amendment offered by the gentleman from Montgomery. The amendment offered by the gentleman from Pike was to limit the special session to thirty days. That was adopted by the Convention, but being an amendment to the amendment offered by the gentleman from Montgomery and that amendment being lost the amendment offered by the gentleman from Pike was also lost. He gave notice at the time that he would move this morning for a reconsideration of the vote by which Section 35 was adopted, in its present shape, in order that he might amend by adding at the end of the section, "and special session shall be limited to thirty days." At his request I make the motion now that the action of the Convention in adopting Section 35 may be reconsidered in order that this amendment may be adopted.

**MR. O'NEAL**—I rise to a point of order. Under Rule 27, which reads as follows:

Rule 27 — When a vote has passed, except on the previous question, or on motion to lay on the table, or to take from the table, it shall be in order for any delegate who voted with the majority to move for a reconsideration thereof on the same day, or within the morning session of the succeeding day, and such motion, if made on the same day—

Now, the gentleman from Pike made this motion on yesterday and under the rules it should have been considered directly after the approval of the journal.

**MR. OATES**—I am in charge of the measure and witnessed just what transpired, and the delegate from Pike offered that amendment—

**THE PRESIDENT**—The Chair will be compelled to be governed by the journal, if the journal deals with the subject.

The journal entry was read as follows:

"Mr. Samford moved to reconsider the vote by which Section 35 was adopted, which motion under the rules went over until tomorrow.

**MR. OATES**—I was proceeding to say that the gentleman offered that amendment when an amendment was pending. His

was adopted but the amendment to which it was attached was lost, and then Mr. Samford did give notice that he would move to reconsider the vote by which the section was adopted today. He could not insist on reconsideration at that time on account, he said, of sickness in his family, and he had to go away.

THE PRESIDENT—It seems to the Chair as the journal shows that the gentleman from Pike entered his motion to reconsider the vote whereby Section 35 was adopted, that it is in order at this time.

MR. O'NEAL—My point of order was that after the approval of the journal a motion was made by the gentleman from Madison and the other business has intervened since the approval of the journal.

THE PRESIDENT—The opinion of the Chair is that the motion may be made at any time during the morning session.

MR. O'NEAL—No, it shall be considered immediately after the approval of the journal on the day succeeding that on which it is made, but if it is first moved on such succeeding day, it shall be forthwith considered. He had the option yesterday of making the motion then, to be considered immediately after the approval of the Journal, or of making it this morning.

THE PRESIDENT—The Chair ruled on that question the other day to this effect, that if he entered his motion on yesterday, it was a special order this morning immediately after the reading of the Journal, and it was the duty of the Chair to submit the motion to the Convention; but if, by the oversight of the Chair, other business was allowed to intervene, it ought not to cut off the gentleman's right to have his motion considered, and the Chair as soon as it was called to his attention, submitted the question to the Convention. The motion now is to reconsider the vote whereby Section 35 was adopted.

MR. deGRAFFENREID—I move to lay that motion upon the table.

MR. JENKINS—I ask the gentleman to withdraw that for a moment.

MR. deGRAFFENREID—I do not like to be discourteous to any one. Will you renew it?

MR. JENKINS—I will. The gentleman from Pike offered an amendment which provided that the session of the Legislature, if called in extra session, should be limited to thirty days. By mistake on yesterday, he offered the amendment to another amendment, and while his amendment was adopted, the amendment he had amended was defeated, and the House did not carry out its wishes on yesterday, and this reconsideration will give the Con-

vention an opportunity to do in fact what it wanted to do on yesterday, and I want to state clearly to the Convention that it acted on this proposition affirmatively.

MR. deGRAFFENREID—I just want to state that my attention having been called to this matter, I withdraw the motion to table, and do not require that you shall renew it.

THE PRESIDENT—Unanimous consent is asked to withdraw the motion.

To this objection was made.

MR. CUNNINGHAM—I rise to a point of order. The gentleman from Hale withdrew the motion to lay on the table and yielded the floor to the gentleman from Wilcox.

THE PRESIDENT—The gentleman from Hale has no power to withdraw a motion which has been submitted to the Convention without the consent of the Convention.

MR. JENKINS—I rise to a point of order. I have the floor.

THE PRESIDENT—The Chair will state that it is in the power of the Convention to authorize the withdrawal of the motion if it is so desired.

MR. BROOKS—I make a motion to withdraw.

MR. JENKINS—I make the point of order that the gentleman cannot make a motion while I have the floor.

THE PRESIDENT—He is making a motion to withdraw the motion you are speaking against.

MR. JENKINS—He may do so after I get through.

THE PRESIDENT—The gentleman will proceed.

MR. CUNNINGHAM—I rise to a question of inquiry. Under what rule does the gentleman from Wilcox discuss the question when a motion to table is pending?

THE PRESIDENT—The Chair has not submitted the motion of the gentleman from Hale to the Convention. The gentleman from Wilcox is in order.

MR. JENKINS—Now, this Convention on yesterday acted affirmatively, as I said, on the proposition of the gentleman from Pike, that is, when the Legislature meets in special session they shall be limited to thirty days. Now I think we acted right in passing that amendment. The Governor can call the Legislature here and by a two-thirds vote they can take up any proposition that they desire, and it would be possible for them to remain in session for twelve months.

MR. O'NEAL—I desire to call the gentleman's attention to Section 5, which has already been adopted. That Section provides that the Legislature shall not remain in session longer than sixty days at the first session after the adoption of the Constitution, or longer than fifty days at any subsequent session. Does that not embrace any session after that and include special session?

MR. JENKINS—I think not. That applies to the regular stated session. The first session after the adoption of the Constitution may remain in session sixty days, and every four years thereafter they may remain in session fifty days, but this Section says that at any time the Governor, when he sees fit, can call the Legislature in special session, and it fails to say how long they shall remain in session, and from my experience with legislative bodies, I believe that there ought to be a limit put upon them, for when they have the power to remain in session they will stay in session until they accomplish what they want to. That is nothing but natural and right, and for the people to be confronted with the Constitution to be voted upon, and when our opponents will get on the stump, "Will you vote for this Constitution, when the Governor may call this Legislature in extra session and it may remain in session for twelve months." Such an argument would have great weight against the ratification of the Constitution.

THE PRESIDENT—The time of the gentleman has expired.

MR. OATES—I merely rise for the purpose of saying that, as Chairman of the Committee, I favor a reconsideration, and am in favor of the amendment, and I believe that I have not heard any dissent from the members of the Committee. I believe the Section ought to be reconsidered and amended.

Upon a vote being taken, the motion to reconsider prevailed.

MR. DENT—I offer an amendment.

The amendment was read as follows:

Amend Section 35 by adding at the end of the Section the following words: "And special sessions shall be limited to thirty days."

MR. DENT—I move the adoption of that amendment, and upon the amendment and Section I call the previous question.

Upon a vote being taken the main question was ordered, and upon a further vote the amendment was adopted.

The question recurring upon the Section as amended, upon a vote being taken, it was adopted.

THE PRESIDENT—The question will be upon the adoption of Section 38 as amended.

Sec. 38. A member of the Legislature who shall solicit, demand, or receive, or consent to receive, directly or indirectly for himself or for another, from any company, corporation or person, any money, office, appointment, employment, reward, thing of value, or enjoyment, or personal advantage, or promise thereof, for his vote, or influence or for withholding the same, or with an understanding expressed or implied, that his vote or his official action shall in any way be influenced thereby; or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another, as the consideration of his vote or influence, or for withholding the same; or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage or thing to another shall be guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for such offense and such additional punishment as is or shall be provided by law.

A vote being taken, the section as amended was adopted.

The secretary read Section 39 as follows:

Sec. 39. Any person who shall directly or indirectly offer, give or promise any money, or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the Legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

MR. OATES—I promised to yield to the delegate from Mobile.

MR. BROOKS—Mr. President, after the storm that we have just had in the Convention, hope the atmosphere is clarified sufficiently for us to give some attention to what I consider an important matter. This Section 39 is, I believe, the same section as found in the present Constitution. The men who put that in the Constitution are entitled to credit for good intentions, and some degree of discernment, but good intentions are not always effective. Dr. Johnson once said that "hell is paved with good intentions," or as the poet has said.

"So Dr. Johnson once did say,

That hell is paved that very way."

Now, the purpose of this section is to protect the members of the General Assembly, and the officers generally of the State from corrupting influences, but it does not go far enough, because practically speaking, it does not take into consideration, or bring within the purview of this section certain insidious influences that are at work all the time. Now, Mr. President, and gentlemen of the Convention, to show you what the State has done, and



how far the State thinks that its officers ought to be protected from the demoralizing influences that may be brought to bear upon their servants, in the discharge of their duties, I want to call your attention to a section in the Act of 1897, on the subject of the Convict Inspectors, where it provides that no inspector, physician of convicts, State, county or municipal officer, or any officer or guard, who has charge, control or direction of convicts, must be in any manner whatsoever interested in the work or profit of the labor of any convict, nor shall receive any gift, gratuity or favor of a valuable character from any person interested in such labor. Now, the Legislature was in a mood at that time to protect the State against undue influences that might be brought to bear upon their servants in the discharge of their duties, and they very properly put that upon the statute book. Well, an inspector may have dealings with contractors, and he may receive a gift without there being the slightest desire on the one side or the other of giving or receiving in a corrupt manner, but in order to protect both parties from engaging in a corrupt contract, or corrupt action, this statute was adopted. Now, the same thing pertains to the government of railroads. A first-class railroad, for instance, if it ever found a purchasing agent accepting a gift or gratuity, or a rebate of any kind from a merchant or manufacturer or producer from whom they bought their supplies, it would not be five minutes before he would be decapitated. Why? Because it is a dangerous thing to allow the disbursing officers or agents employed in purchasing, to be under an undue influence that may in time cost the railroad a great deal of money, and, therefore, I say every first-class railroad would, as soon as they found that such a thing existed, they would apply the remedy in short order. Now, Mr. President, I hold in my hand document No. 259. It is the testimony of Mr. Milton H. Smith, the able President of the Louisville and Nashville Railroad. It was taken before the Committee on Interstate Commerce. Mr. Morrison was the chairman of that committee in 1897. Now, I shall read a very short extract, only a few lines, but I wish to state, first, the circumstances under which this testimony was taken. As is well known, Congress passed some years ago a law requiring the railroads to adopt certain safety appliances for the protection of their employes, and of passengers. It was a long time before many railroads complied with that, and Mr. Smith was summoned before this committee, and the inquiry was made of him why he had not complied with that law. In giving his reasons, Mr. Smith alleged, as other railroads had alleged, that that was a very expensive thing and required a great deal of money, and that latterly the railroad had not been making much money; its revenues had been somewhat reduced, and Mr. Morrison finally asked him how it was. He said a good deal of it was done in the way of rebates, etc., and then he comes to the question as issue. "As a matter of fact," said Mr. Morrison,

"you do have a large free list?" "Yes, sir." "Made up of Senators and Representatives?" "Yes, made up of Senators and Representatives." "To what extent does the judiciary figure in that, if at all?" I want to show you how pregnant his answer is, withdrawing insinuations. In discussing this question I want to say that the railroads are not all to blame, neither are their officers always to blame, and I propose to discuss this thing dispassionately, without any prejudice, with a view of getting at the influences that I say are insidiously at work, whether intended corruptly or not. Mr. Smith says: "I will have to refer you to our attorney, Judge Baxter of Nashville, one of the best lawyers the country has ever produced. I think Mr. Baxter has been of the opinion, and I fear most of our attorneys have been of the same opinion, that it is well not to appear before a Judge unless he has a pass if he wants one. In other words, they proceed on the idea that if the judge can afford to take a pass, they can afford to give it to him. I believe that does us harm. I believe many a judge leans backward for fear he will be accused of favoritism, and for that reason he leans the other way, and so decidedly as to show it." Then he goes on again, and speaking of Judges, says: "If they want a pass, and ask for it, we give it. We don't press them on them. They may not ask directly for themselves, but they have some friend that does so, and that is the mode which is very frequently employed. Some friend does so."

Now, I want to call the attention of the President and the gentlemen of the Convention to what I consider a just interpretation of this statement of Mr. Smith. He says that a Judge with a pass in his pocket frequently leans on the other side against the railroad. In other words he becomes a coward to his conscience. His conscience makes a coward of him, and he is so afraid that his integrity will be affected by the possession of the pass, or that he may be criticised, that he leans against the railroad and fails to do them justice. Now, I ask what is that but a pollution of the very fountains of justice. Here is a man who leans so far on the other side, under the influence of the pass in his pocket, that he cannot give the railroad justice. Is that not a fair conclusion or inference to draw from that statement of Mr. Smith? Take the other side of the case. Mr. Baxter thinks and always felt very much more comfortable if he appeared before a court that had a pass. He says Mr. Baxter and I fear most of our attorneys have been of the same opinion—it is not well to appear before a judge unless he has a pass, if he wants one. The meaning is, he expects the Judge, by reason of the obligation which exists to the railroad by being the recipient of the pass will warn his judicial decision in favor of the railroad and against the other party. Take whatever view you please, the result is corruption. Therefore, Mr. President, I say this constitutional provision does not go far enough because it does not take into consideration practically the insidious influences

that are going on all the time in that respect, and I ask you gentlemen of the Convention—I do not charge anybody; I do not charge any railroad official with having in his mind any corrupting scheme, nor do I charge any gentleman who occupies a position of honor or trust under this State of being influenced by any corrupt influence when he accepts a pass, but I ask you in candor and frankness if, in the last analysis, and if the fundamental character of that transaction, it is not tainted with the element of corruption. Therefore I ask, Mr. President, that my amendment or addition to that section be read.

The amendment was read as follows:

No railroad or other transportation company shall grant free passes, or shall at reduced rates not common to the public, sell tickets for transportation to any person holding any office of honor, trust or profit in this State, and the acceptance of such pass or ticket by a member of the Legislature or any officer shall work a forfeiture of his office, at the suit of the Attorney General.

Any railroad or other transportation company or officer or agent thereof who shall grant a free pass, or shall at reduced rates not common to the public, sell tickets for transportation to any such person shall be deemed guilty of a misdemeanor and is liable to punishment, except as herein provided.

No person or officer or agent of a corporation who gives any such free pass, free transportation or sells tickets for transportation at reduced rates hereby prohibited shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving or selling of the same. But this shall not prohibit the Legislature from authorizing the State to contract with any such railroad or other transportation company for the transportation at reduced rates of State officers while traveling in the discharge of their official duties.

Any solicitor who shall fail faithfully to prosecute a person charged with the violation in his county or circuit of any provision of this section which may come to his knowledge, shall be removed from office by the Governor, after due notice, and an opportunity of being heard in his defense.

MR. BROOKS—Now, Mr. President, the only provision we have in the Constitution under the article of Corporations has been a dead letter ever since the Constitution was adopted, and the object of that is to galvanize that provision into life. If the Convention will notice, this amendment affects not only the acceptors of passes, but the railroads or transportation companies who give the pass. It goes on and provides also that railroad officials shall be excused in testifying, and if they testify against themselves they

shall not be subject to criminal or civil prosecution if they testify to the giving of passes, and that is the only way in which the evidence can be adduced, as to whether a man has received a pass or not, through the testimony of railroad officials, and those officials giving that testimony are exempted from the provision of the law under which they might be prosecuted, civilly or criminally. Another provision is that the State may be authorized under authority of the Legislature to contract at reduced rates with a railroad from time to time for the transportation of the officers of the State while those officers are engaged in the discharge of their official duties. That is all I care to say on the subject, I submit that amendment, and call for the previous question on the section and the amendment, and call for the ayes and noes.

MR. JACKSON—I would like to suggest to the gentleman that he amend his amendment by striking out the words General Assembly and inserting in lieu thereof Legislature.

MR. BROOKS—If I have a right to do so, I will do it.

Unanimous consent was given, and the amendment allowed.

MR. BROOKS—I call for the ayes and noes.

The call was not sustained.

THE PRESIDENT—The question is on the call for the previous question, on the section and the amendment. The question is, shall the main question be now put?

Upon a vote being taken, a division was called for.

MR. WHITE—I rise to a point of order. The ayes and noes were ordered.

THE PRESIDENT—The call was not sustained.

Upon the division by a vote of fifty noes and thirty-two ayes, the motion for the previous question was lost.

MR. COLEMAN (Greene)—If it is not out of order, I wish to say when a question of this importance is introduced before this Convention and discussed in a tone of voice that all of us cannot hear, and we do not know what we are voting upon, to move the previous question under such circumstances, does great injustice to the members of this Convention who desire to know and understand the questions they are voting upon. An important question like this ought to be examined, and we ought to have an opportunity to read it. I sent up to the Secretary to try and get the amendment to ascertain what was in it, but under the circumstances he could not let me have it. I move, if it is in order, that this question be postponed, to be taken up and considered in connection with the ordinance that was introduced this morning and referred to the committees.

THE PRESIDENT—Does the gentleman from Greene direct his motion to the amendment offered by the gentleman from Mobile?

MR. COLEMAN (Greene)—Yes, sir.

Upon a vote being taken, the motion to postpone consideration was carried.

MR. OATES—I move the adoption of the section.

A vote was taken, and Section 39 was adopted.

Section 40 was read as follows:

Sec. 40. The offense of corrupt solicitation of members of the Legislature or of public officers of this State or of any municipal division thereof and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment in the penitentiary, and the Legislature shall provide for the trial and punishment of the offenses enumerated in the two preceding sections, and shall require the judges to give the same specially in charge to the grand juries in all the counties of this State.

MR. OATES—The amendments to the section as it stands in the present Constitution are plain, and I presume that every one who has read it understand it, and I move the adoption of the section.

A vote was taken and the section adopted.

MR. LONG (Walker)—I ask permission to introduce a short resolution, to be referred to the proper committee.

Objection was made to the resolution.

MR. LONG (Walker)—I move that the rules be suspended and that the resolution be read.

Upon a vote being taken, the rules were suspended and the resolution read as follows:

Resolution by Mr. Long (Walker):

Various threatening sulphuric fumes have arisen in this Convention to such an extent as to make conservative and thoughtful members apprehensive of their safety in the future, therefore be it

Resolved, That immediately after the passage of this resolution, the Sergeant-at-Arms be, and he is hereby, ordered to close the doors of this hall, and to search the person, desk and room of each delegate for railroad passes pistols, dirks, brass-knucks and razors, and to deliver them forthwith to the secretary; all such

articles so found to be sold by the secretary to the highest bidder the proceeds of the same to be paid into the State treasury, in the interest of harmony and good government.

MR. OATES—Just now, when Section 40 was adopted, it escaped me that an amendment, which was adopted, in the first line of Section 38, struck out the words corruptly, which is repeated in Section 40, and, in order that they may correspond, I move to reconsider the vote by which Section 40 was adopted with a view of striking out that word. I move a suspension of the rules for the reconsideration.

The rules were suspended, and the motion to reconsider prevailed.

MR. OATES—I move to amend by striking out the word “corrupt” in the first line of Section 40, to correspond with Section 38.

MR. COLEMAN (Greene)—I think we should move with more care on this matter. Read that section: “The offense of corrupt solicitation.” Read it without the word “corrupt” and you have the offense of solicitation. What does that mean, to solicit or to ask, members of the legislature or public officers of this State or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action.” You cannot ask a member of a board of a town, or of the legislature, and you cannot solicit him in any way. When you ask him to do anything it is for the purpose of influencing his action. You cannot approach him with argument or reason, and it seems to me we are going too far in this matter. Now everything that ought to be covered has been considered and we have gone as far as it is right and proper to go in the adoption of Section 38, but you could not under this amendment even advocate the measure before a Committee, or a member of a board, without subjecting yourself to prosecution. I therefore move to lay the amendment upon the table.

MR. OATES—I merely want to say with the permission of the Convention—

THE PRESIDENT—The motion is to lay on the table, and it is not debatable.

MR. OATES—I am aware it is not debatable but I want to say one word in explanation.

The gentleman asks unanimous consent to make an explanation.

The consent was given.

MR. OATES—My attention was called to it when Section 38 was under consideration, which reads: "Who shall corruptly solicit." Corruptly was stricken out, as to members of the legislature, and in Section 40, this is "the offense of corrupt solicitation of members of legislature, etc." I made the motion only because the word has been stricken out in Section 38. The two sections seemed to be in conflict and therefore I made the motion. I have not examined it as to its effect.

Upon a vote being taken the motion to table was carried.

The question recurred upon the adoption of the section, and upon a vote being taken the section was adopted.

Section 41 was read as follows:

Sec. 41. A member of the legislature who has a personal or private interest in any measure or bill, proposed or pending before the legislature, shall disclose the fact to the House of which he is a member, and shall not vote thereon.

MR. OATES—That is the present Constitution and I move its adoption.

MR. BURNS—I desire to offer this amendment at the request of my colleague, Mr. Reese.

The amendment was read as follows:

Amend Section 41 Article on the Legislative Department, by inserting after the word "legislature" in the second line the words "or who is an officer, agent or attorney of any corporation or association, or person having such interest" and by inserting after the word "committee" in the third line the words "or house."

MR. OATES—I see the operation of the amendment. This section is a declaration that any member of either House having any personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the House of which he is a member and shall not vote thereon. This amendment is to exclude any member who is also the attorney of any corporation from voting. It seems to me as it now stands it is broad enough. If members are interested, personally or privately, he would have to disclose his interest under it, as it now stands. Therefore, I move to lay the amendment on the table.

Upon a vote being taken, a division was called for, by a vote of 38 ayes and 24 noes the motion to table prevailed.

MR. BURNS—I regret to do so, but I give notice to the Chair there is not a quorum voting.

THE PRESIDENT—The Chair will proceed to ascertain and count a quorum.

The Chair declared that a quorum was present, and the question recurred upon the adoption of the Section.

MR. BROOKS—I would suggest that the Clerk be instructed to read the section as it would be with the amendment.

THE PRESIDENT—The amendment has been lost. The question is on the section.

MR. DENT—The Secretary read it "house" in the second line and the printed copy is "committee" I would like to know which is correct.

THE SECRETARY—To the House of which he is a member."

MR. CUNNINGHAM—This is a very serious question. I will briefly call to the attention of the Convention that in 1896, I had the honor to be a member of the Senate of this State and prepared and introduced a bill in the Senate which had for its purpose a revolution of the convict system of the State of Alabama. I do not know what delegates here may think of my sincerity or what my constituents at home or anybody else may think, but I was in earnest. No man was ever more so, and yet had I known this section was in the Constitution I could not have voted upon my own measure. I, therefore, move to amend, Mr. President, after the words—

MR. DENT—I think if the gentleman will examine, he will find this section in the old Constitution.

MR. CUNNINGHAM—I say if I had known it was there I could not have voted upon my own measure. I, therefore, move to amend after the word "thereon unless permission is authorized by the house." That is, that he may submit the question as to whether or not he has an interest to the house and let the house determine the matter.

THE PRESIDENT—"Unless authorized by a vote of the house" is the amendment.

MR. ROGERS (Sumter)—What would be the good of that provision? If you were on the winning side you would vote, and if you were on the losing side you would not be allowed to.

MR. CUNNINGHAM—Add that at the end of the section "unless permission is authorized by the vote of the house." I will answer the question of the gentleman from Sumter if he will state it again.

MR. ROGERS (Sumter)—I ask what would be the good of this amendment? If a man were with the majority of the house, they would give him permission to vote, and if he were with the



minority, he would not be given permission to vote on the question, so what would be the good of the provision in the Constitution?

MR. CUNNINGHAM—In answering the question, I will say that under this provision of the Constitution as it now stands the Representatives in the House or Senate might have an interest as I had on that occasion. It killed for me the goose that laid the golden egg, straight out without doubt, and, therefore, I had an interest in it, but I was more interested in the passage of the bill and in its becoming a law than I was in any personal interest that I may have had in the matter and therefore I would have been compelled under this provision to have announced that fact and not voted upon the question. Under this amendment I could have submitted the problem to the Senate and if they had said that my personal interest was not controlling me, then I could have voted.

MR. PILLANS—Would not the desired object be reached by using some such expression as this: "No member who has a personal or private beneficial interest." As I understand the difficulty presented in the case of the gentleman from Jefferson, he wanted to have a measure passed which injuriously affected his interests, and yet he feels that this section would have affected his voting on it. Can't you frame a clause, which will provide that where you are interested beneficially in a measure that you cannot vote? If so, I shall offer the amendment.

MR. CUNNINGHAM—I am not quite astute enough to catch whether that meets the object I have to the section or not. I would like to be in a position should I ever have the honor again to sit in either house of the General Assembly of the State, to be permitted to vote up a question that I honestly and conscientiously believe to be right although if it should become a law it would be to my detriment. That is all I ask.

MR. COBB—Will the gentleman allow a question?

MR. CUNNINGHAM—Yes.

MR. COBB—Does the gentleman think he has a personal or private interest in such a measure when he proposes to vote for it, and it injures him, in the contemplation of this law, he has no personal or private interest.

MR. CUNNINGHAM—I will say that, suppose some one else were to propose the measure and the question came up and you wanted to vote no, what would be your status?

MR. COBB—I say if you want to vote for a measure that will inure to your interest, then you ought not to vote, but if you are voting for a measure which injures you personally and does not benefit you, you are not prohibited by the language of the law.

MR. CUNNINGHAM—I cannot see it “Pending before the Legislature shall disclose that fact to the house of which he is a member and shall not vote thereon.” There is no question about that proposition. He shall not vote either way, whether he is benefitted or whether he is injured. I hope the amendment will be adopted.

MR. OATES—There is no necessity for the amendment offered by the delegate from Jefferson, and he will see when he considers this section a little more closely. “A member of the Legislature who has a personal or private interest in a private bill pending before the Legislature shall disclose the fact to the house of which he is a member and shall not vote thereon.” In the first place, it is a question for the member, and for his conscience to decide whether it is a matter in which he has a private or personal interest, and if he is in doubt as to whether it be such or not it is his duty to disclose the fact to the house and secure action by that house as the section now stands and the house can vote on the question as to whether when he states the fact of his connection, whether it is a personal interest, or such interest as should properly bar him from voting or exclude him from voting. The section is right as it is, and I, therefore, move to lay the amendment on the table.

Upon a vote being taken the motion to table was carried.

Leaves of absence were granted as follows:

Mr. Reynolds of Chilton, Mr. Weatherly, Mr. Reynolds of Henry, Mr. Smith of Autauga, Mr. Espy for today. Mr. Pillans, Mr. Fitts, Mr. Sentell, Mr. Graham of Talladega, Mr. Parker of Elmore, Mr. Williams of Elmore, Mr. Kirkland for Monday, Mr. Browne for Monday, Tuesday and Wednesday, Mr. Robinson for Monday, Tuesday and Wednesday, Mr. O’Rear for Saturday and Monday.

MR. DENT—I rise to a question of privilege.

THE PRESIDENT—The gentleman will state the question of privilege.

MR. DENT—This morning when I introduced the resolution in reference to the ordinance introduced by the gentleman from Greene—

THE PRESIDENT—Will the gentleman suspend one moment.

MR. BURNS—In deference to my colleague of Dallas, I give notice that I may make a motion to reconsider the vote by which the Convention refused to accept the amendment offered by me.

THE PRESIDENT—The Chair will state, for the information of the gentleman from Dallas, that the question would be upon the adoption of the Section.

MR. BURNS—I voted aye for the adoption of the Section.

MR. DENT—I was going to state that this morning when I offered the resolution and asked its reference to the Committee on Rules, it was referred to the Committee on Corporations by the Chair. I desire to read Rule 28, because I think the Chair, possibly without due consideration, made an error in its ruling.

The rule says: "All resolutions before voted on shall be referred to and reported from the Committee on Rules, except—" I don't think my resolution comes within the exception, and I thought under the rules it ought to have gone to the Rules Committee.

THE PRESIDENT—The gentleman did not call the rule to the attention of the Chair at the time.

MR. DENT—I could not find it at the time.

THE PRESIDENT—If the gentleman had done so, the ruling of the Chair would have been different. The Chair is of the opinion that if the gentleman had called the attention of the Chair to the rule the ruling would have been otherwise. The reasoning that prevailed with the Chair was that it affected the report of a Committee, and it seemed to the Chair at that time it was proper to go to the Committee as expressive of the sense of the House that an early report should be made.

MR. DENT—Well, all I desire is to get a report. It seems to me, by implication, a resolution requesting a committee to report should go to the same Committee.

MR. MALONE—That would apply to resolutions before the appointment of committees and the Chair has so held heretofore.

THE PRESIDENT—That has been the line of construction of this rule. The Chair remembers since the gentleman calls attention to the rule, it has been the practice to refer resolutions as well as ordinances to the respective committees having in charge the subject as to which they were submitted, but had the gentleman called the attention of the Chair to this rule, it might have induced the Chair to rule differently.

Thereupon the Convention adjourned until Monday morning at 11 o'clock.

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#### CORRECTIONS

In forty-seventh day's proceedings the remarks of Mr. deGraffenreid, explanatory of his amendment to Section 24 of the Article on Legislative Department should read as follows:

MR. deGRAFFENREID — I do not care to discuss that amendment. I call the attention of the Committee, however, to the fact that it strikes from the Section under consideration the provision that two-thirds of the House may dispense with the reading of the bill at length when it is to be signed by the presiding officer of such House. Heretofore the law has required the presiding officer of each House to sign all bills in the presence of the House, but, as the law only required such signature after bills had been read by their titles merely, this Convention knows that frauds have been perpetrated upon the General Assembly. As we have already declared that the Journals of each House shall be presumed to be absolutely true, I think that everything that can be done by this Convention to prevent a fraud being perpetuated upon the General Assembly should be done. For that reason I offer the amendment and move the previous question.

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In Colonel Sanford's speech on Friday, the report makes him say or "suggesting alone." It should have been or "suggesting a loan."

And he is made to say, "For instance, Sir Robert Peel's budget when he introduced an income tax in 1842, and on repealing the corn laws in 1846, or in reducing the wine duties in 1860."

Colonel Sanford said in discussing the 29th Section of the report: "For instance, Sir Robert Peel's budget introduced the income tax in 1842, and the repeal of the corn laws in 1845 and the budget of Mr. Gladstone by which he reduced the duties on wine in 1860."

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## FIFTY-FIRST DAY

MONTGOMERY, ALA.,

Monday, July 22, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by Rev. Dr. A. L. Andrews, as follows:

We give Thee thanks, O Lord God, our Father, for Thy watchful care which Thou hast exercised over us since we last met together. We thank Thee that all the days of our lives have been attended with Thy kindness and mercy and love. We thank Thee that, with a Father's care, Thou has ever been watchful of us, and Thou hast ever provided for our every want, and we praise Thee this morning that during all the days of our past Thy mercy

and Thy love have been boundless and free; and we are before Thee this morning, O Lord, with our hearts filled with gratitude for Thy fatherly care and for Thy tender mercies. We do sincerely repent of all of our sins. Forgive us, O Lord, that we have grieved Thy Holy Spirit, or that we have gone aside from Thy Holy Word, and grant that we may each in our hearts this morning repent of our sins, and feel the presence of God's Holy Spirit bearing witness with ours that we are His children. Impress upon us, O Lord, that there is no safe course in life, in any department of our great life, save in the Lord, our Master, and that if we will trust Him and be guided by Him in all things, then we shall make of life a success in whatever sphere we live and move; but that with God out of our lives, ignoring Him in all we do, and in all that we plan, our lives, in the end, can but result in failure. Help us, therefore, O Lord, to realize this dependence upon Thee, and this morning to consecrate ourselves anew, soul and body, to Thy service. We pray that Thou wilt especially bless this assembly, O Lord. We thank Thee that the health and strength of Thy servants has been dead in Thy sight. No death, no disaster, has befallen and, and we pray Thee this morning as they assemble for another week's duties, that Thou wilt be with them and direct them in all that they say, in all that they do, in all that they plan, and may their work, O Father, redound to Thine everlasting glory, and to the good of our entire people. May the Lord bless their families at home, and keep them from harm of every kind and may our Father greatly bless our State; bless our Nation; bless those who are in authority over us, and may the Lord help us in all of the walks of life, to honor God, and to live worthy of our divine origin, and of the great calling wherewith we have been called, in Christ Jesus, our Lord. We pray, again, our Father for this Convention. May it be a day of great good; may the results accomplished be acceptable unto Thee, and to the people, and may the Lord be with His servants in all the work that lies before them, and when Thy work is completed, may they have the approval of a good conscience, the approval of a Heavenly Father, and hear the plaudits of a grateful people, saying "well done, good and faithful servants." Hear us, O Lord, in these, our prayers; answer us in great mercy and when we are done serving Thee below, and sleep with our fathers, gather us to Thyself in heaven, and there we will praise Thee forever, through Christ our Redeemer. Amen.

Upon the call of the roll 80 delegates responded to their names.

Leaves of absence were granted as follows:

To Mr. Cardon, called home on account of sickness; Mr. Burnett for today; to Mr. Jackson of Lee, for today; to Mr. Henderson of Pike for today.

MR. BROOKS—I want to call attention to an error in the stenographic report in relation to the amendment I offered to the

ordinance as amended which I submitted on the question of free passes.

It contains eight lines which does not belong to the amendment at all. The stenographic reporter came to me Saturday night and said that the clerk's office was locked up and he had gotten all the papers from him except that particular amendment, and asked for a copy of it, and I happened to have the original from which the copy was taken and on that amendment was eight lines which I had erased in his presence. By mistake of the printer, I suppose, that is incorporated as a part of the amendment, and I wish to have that corrected by the reporter.

There is another matter in quoting from the statement of Mr. Smith, the president of the L. & N. R. R. Co., where I made one or two remarks, by way of parenthesis, or by way of comment, and it is put down as a part of the quotations. I desire to have that also corrected.

(Mr. Brook's correction appear at the close of today's report).

The Committee on Journal reported that they had examined the Journal for the fiftieth day of the Convention, and found the same to be correct, and upon motion it was adopted.

THE PRESIDENT — The Secretary will call the roll on Standing Committees. The roll of delegates will not be called for ordinances, resolutions, etc., the time of 10:30 has expired.

MR. TAYLOR—I ask unanimous consent to have a petition read and have it referred.

Unanimous consent was given, and the clerk read the petition as follows:

To the Honorable President and Members of the Constitution Convention, now in session at Montgomery, Ala.:

Gentlemen—We, the business men and citizens of the city of Uniontown, do most respectfully petition your honorable body to insert in the new Constitution a clause giving plenary powers to the Railroad Commission, and having them elected by the people and not appointed by the Governor, as the law now exists.

Signed by the Mayor, Councilmen, and many others.

Referred to Committee on Corporations.

MR. REYNOLDS (Chilton)—I ask unanimous consent to introduce an ordinance.

Unanimous consent was given and the Clerk read as follows:

Ordinance No. 430, by Mr. Reynolds of Chilton.

Be it ordained by the people in Convention assembled.

In case of the insolvency of any incorporated bank, the stockholders therein shall be liable for the full amount of the stock held by each of them respectively, in addition to the amount originally subscribed for said stock.

Referred to Committee on Banks and Banking.

MR. KYLE—I ask unanimous consent to introduce a resolution.

Unanimous consent was given, and the Clerk read the resolution as follows:

Resolution No. 263 by Mr. Kyle:

Resolved that after the expiration of the fifty day limit fixed by the Legislature in calling this Convention, no member shall receive per diem, except for such time as the Journal shows him to have been present, and that the Secretary of this Convention be instructed that this provision applies to all officers and employes as well as to members of this Convention.

MR. KYLE—I ask that that resolution be referred to the Committee on Rules, and ask a report not later than Wednesday.

THE PRESIDENT—Does the gentleman move that the committee be instructed to report?

MR. KYLE—Yes, sir.

A vote being taken, the motion to instruct the committee to report on Wednesday was lost, and the resolution was referred to the Committee on Rules.

MR. ROGERS (Lowndes)—I ask unanimous consent to introduce a resolution.

Unanimous consent was given, and the resolution was read by the Secretary as follows:

Resolution No. 264 by Mr. Rogers of Lowndes:

Resolution to change Rule 36.

Resolved, That ayes and noes shall only be ordered when the call therefor is sustained by forty delegates.

Referred to Committee on Rules.

MR. BULGER—I ask unanimous consent to introduce a resolution.

There being no objection, the Secretary read the resolution as follows:

Resolution No. 265 by Mr. Bulger :

That whereas this Convention has been in session fifty days,

That whereas during said time the weather has been oppressively hot, and many confusions and complications have arisen, which were calculated to confuse and entangle, not only the Secretary in making his Journal, but the reading clerk in taking the vote and calculating the same.

That whereas, during all this confusion and complications, both the Secretary and Reading Clerk, by their energy, industry and honesty of purpose, have kept not only the Journal, but the official call and count absolutely correct,

That whereas, in every test of the Journal and in every verification of the vote, perfect accuracy has been demonstrated.

Therefore, be it resolved by the people of Alabama in Convention assembled, that commendation and thanks are hereby tendered to both the Secretary and Reading Clerk of the Convention, for the faithful, energetic and accurate manner in which they have and are discharging the duties of their respective offices.

Referred to the Committee on Rules.

THE PRESIDENT—The special order for this morning is the report of the Committee on Legislative Department The Secretary will read Section 42.

The Secretary read Section 42 as follows :

Sec. 44. In all elections by the Legislature the members shall vote viva voce, and the votes shall be entered on the Journals.

MR. OATES—I move its adoption.

A vote being taken, the section was adopted.

The Secretary read Section 43 as follows :

Sec. 43. It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that mode of adjustment.

MR. OATES—It is the same as in the present Constitution. I move its adoption.

A vote being taken, the section was adopted.

The Secretary read Section 44, as follows :

Sec. 44. It shall be the duty of the Legislature, at its first session after the ratification of this Constitution, and within every subsequent period of twelve years, to make provision by law for



the revision, digestion and promulgation of the public statutes of this State, of a general nature, both civil and criminal.

MR. OATES—The only change made in that from the present section is by inserting twelve instead of ten. Ten is the present provision, but as the Convention has provided for legislative sessions once in four years, it is made twelve. We thought that would be frequent enough to make codifications of the laws.

MR. ASHCRAFT—I desire to ask the chairman of the committee for information. It provides at the first session after the ratification of this Constitution, and every twelve years thereafter. Are we to understand the laws are to be codified again immediately after the ratification of this Constitution?

MR. OATES—Not at all; it makes a law or codification, instead of ten years apart, it will be twelve.

MR. ASHCRAFT—Ought it not to be twelve years after the last?

MR. OATES—I think that is left to the Legislature. I think it would be, instead of providing for it to be ten years from that time. That is left, however, with the Legislature.

MR. ASHCRAFT—It seems, Mr. President, that the provision here is mandatory that it should be made immediately after the ratification and twelve years thereafter, not twelve years after 1896, but twelve years after the meeting of the Legislature—after the ratification of this Constitution.

MR. OATES—It does not matter that a law be made in advance; this is simply to regulate the period of time that should elapse between the different codifications of statutes. The first Legislature after the ratification of this Constitution passes a law and fixes a time.

MR. COLEMAN (Greene) — May I ask the gentleman a question?

THE PRESIDENT — Will the gentleman permit an interruption?

MR. OATES—Certainly.

MR. COLEMAN—Suppose it read this way: It shall be the duty of the Legislature after a period of twelve years to make provision by law for the revision, digesting and promulgation of the public statutes of this State. What would you say that meant?

MR. OATES—I would say that would mean they could not make provisions until twelve years after the ratification of this Constitution.

MR. COLEMAN—And then it must do it?

MR. OATES—Yes, sir.

MR. COLEMAN—If that construction is correct, it necessarily follows that at the first session after the ratification of this Constitution, the Legislature is compelled to do precisely what it says; it must do twelve years after, because it says "At its first session after the ratification of this Constitution," the very thing which you say it should do twelve years afterwards.

MR. OATES—The Legislature should provide for the codification twelve years apart. I have no objection to striking out. "At its first session after the ratification of this Constitution."

MR. COLEMAN—I think perhaps if it would say that it is the duty of the Legislature that it shall make provision for the revision, digesting and promulgation of the public statutes every twelve years, it would be all right.

MR. OATES—I have no objection; that is what is aimed at; it is a copy of the present Constitution.

THE PRESIDENT—The chair will ask the gentleman to reduce his amendment to writing.

MR. HARRISON—I would ask the chairman of the committee if the amendment should read such codification be made in 1906 and every twelve years thereafter would it meet his approval?

MR. OATES—It would, but is unnecessarily long. The idea of the committee was to change the length of time to elapse between codifications. I am willing for it to be changed so as to meet the views of the gentleman, preserving, of course, that one object.

MR. O'NEAL—Is not this section in the exact language of the Constitution of 1875?

MR. OATES—I think it is, with the exception of striking out ten and inserting twelve.

MR. O'NEAL—Did that section ever give any trouble?

MR. OATES—Not at all; but when we changed the time of the Legislature to once in four years, we thought it best to lengthen the time for the codification of the statutes.

Amendment by Mr. Walker (Madison): "It shall be the duty of the Legislature to make provision by law for the revision, digesting and promulgation of the public statutes of the State of a general nature, both civic and criminal, every twelve years."

MR. WATTS—I wish to offer a substitute.

The Secretary read the substitute as follows:

"It shall be the duty of the Legislature in 1906, and within every subsequent period of twelve years, to make provision by law for the revision, digesting and promulgation of the public statutes of this State of a general nature both civil and criminal."

THE PRESIDENT—The question will be upon the adoption of the substitute by amendment of the gentleman from the gentleman from Montgomery to the Madison.

MR. ASHCRAFT—The objection to the substitute is that it requires the Legislature to make that provision in 1906, whereas there may not be a session of the Legislature in that particular year.

MR. WATTS—There is the amendment offered by the gentleman from Madison will leave it elastic, so that within a period of twelve years from 1896 they make the codification and adjust it to the particular year in which the Legislature may meet. The last codification of the laws of this State was in 1896. The Legislature will meet in 1906, which will be ten years from the last, and the Legislature will thereafter meet every four years. It thus provides for a codification in 1906, ten years from the last order of codification; thereafter it will be twelve years.

THE PRESIDENT—The question is on the substitute of the gentleman from Montgomery.

MR. SENTELL—I do not know what the purpose of the Committee was, but it strikes me that it would be very necessary after the adoption of this Constitution to have a revision and a codification of the laws, for certainly this Constitution is going to change a good many laws, and if that is so, it don't matter whether ten years has elapsed since the last revision or not. It would be a very proper thing, it seems to me, for the first legislature after the adoption of this Constitution, to do that work, and then every twelve years, if necessary, thereafter. This Constitution is going to make a good many changes in the laws of Alabama, new laws will be made and old ones changed to fit this Constitution, and it would be very inconvenient if we had to wait until 1906 before we got the benefit of that in the new code, so I think it would be eminently proper that the very first legislature after the ratification of this Constitution, should attend to this matter and then let us have the benefit of it in the new code, and every twelve years thereafter.

MR. EYSTER—I move the previous question upon the section and amendments.

THE PRESIDENT—The gentleman from Morgan moves the previous question upon the pending amendment and substitute. The question is, shall the main question be now put?

The main question was ordered.

MR. OATES—I only wish to add to what I have said a correction of the apprehension of some of the delegates. Now, my colleague from Montgomery speaks of the meeting of the legislature in 1906, and having a new code right away. That is impracticable. It takes after the act is passed through the General Assembly, a good active years work, and it is frequently extended to two years, and I know that under the last act of 1894-1895, just after I had the honor of being installed as Governor, the duty devolved upon me to name a codifier, and I named, I am glad to say, a very efficient one, who did his work thoroughly, but though he worked faithfully, and had efficient assistants, it was only ready to be passed upon, and accepted by the next legislature. If we wait until 1906, and the legislature then passes an act, as it would under this substitute, why it would be later and it would take a special session of the legislature—and with four years sessions, before the new code could go into operation and therefore I am inclined to think that the section had better remain as reported.

MR. O'NEAL—Allow me to ask a question?

THE PRESIDENT—Will the gentleman yield?

MR. OATES—Certainly.

MR. O'NEAL—Isn't there really more necessity for codification after the ratification of the present Constitution than there was after the ratification of the Constitution of 1875?

MR. OATES—I don't think there is, but there may be necessity, it is true.

MR. O'NEAL—Isn't it a fact we are making more changes in this Constitution than that made in the Constitution of 1875?

MR. OATES—Yes. Greater number.

MR. O'NEAL—And if a necessity existed then, I see no reason why the necessity is not greater now than it was then.

MR. OATES—In view of the fact that it will take probably two years, or the better part of it, to complete the work after the act is passed. I think that delegates need not apprehend a two speedy production of the codification under this section as reported, and therefore I am inclined to think that it is better to report it, although I am not wedded to it, to any particular idea, except to carry out the main one, which is that once in every twelve years, there shall be a codification of the statutes. It was thought by your Committee that with that simple amendment, striking out ten, and substituting twelve, that the object would be accomplished.

MR. O'NEAL—I move to lay both the amendment and substitute on the table.

THE PRESIDENT—The gentleman is not in order, the previous question has been ordered.

MR. HARRISON—I wish to ask the Chairman of the Committee one question.

THE PRESIDENT—Will the gentleman yield?

MR. OATES—Certainly.

MR. HARRISON—You provide in this, at its first session after the ratification of this Constitution, will there be a session of the legislature just twelve years from then?

MR. OATES—There certainly would not be, if the Constitution stands as so far adopted.

MR. HARRISON—Then your proposition would not work.

MR. OATES—It would work very well in this way. The legislature to be elected next year would make provision for the work to be done, and I presume as now, that the Governor would appoint a codifier, and he would go on with his work. It would take four years before it would be ratified, and promulgated, that would reach 1906, unless an extra session of the legislature was called, it would reach the very time that my colleague from Montgomery endeavors to effect, by postponing until 1906.

THE PRESIDENT—The question will be upon the adoption of the substitute offered by the gentleman from Montgomery for the gentleman from Montgomery for the section reported by the Committee and the pending amendments.

A vote being taken the substitute was lost, and the question then recurred upon the amendment, and a vote being taken, it also was lost, and the question then recurring upon the section as reported by the Committee, the same was adopted.

The Secretary read Section 45 as follows:

Sec. 45. The legislature shall pass such penal laws as they may deem expedient to suppress the evil practice of duelling.

MR. MURPHREE—I desire to offer an amendment.

The Secretary read the amendment as follows:

“Add at the end of the section, the words ‘and carrying concealed pistols.’”

MR. MURPHREE—I do not propose to make a speech, but I hope the amendment will be adopted. All the delegates to this Convention know that the carrying of concealed pistols is a great evil, and gives to our courts more trouble than any other crime known to our land.

MR. CARMICHAEL (Colbert)—I move to lay the amendment on the table.

A vote being taken, the amendment was tabled by a vote of 52 ayes and 21 noes, on a division.

The question then recurred on the Section as reported by the Committee, and a vote being taken the same was adopted.

The Secretary read Section 46 as follows,

Sec. 46. It shall be the duty of the Legislature to regulate by law the cases in which deduction shall be made from the salaries of public officers for neglect of duty in their official capacities, and the amount of such deduction.

MR. OATES—I move the adoption of the Section.

A vote being taken the Section was adopted.

The Secretary read Section 47 as follows:

Sec. 47. It shall be the duty of the Legislature to require the several counties of this State to make adequate provision for the maintenance of the poor indigent idiots and insane persons.

MR. SAMFORD (Pike)—I have an amendment I desire to offer, by striking out all after the word "poor" in the second line of the Section.

THE PRESIDENT—The question will be upon the adoption of the amendment offered by the gentleman from Pike.

MR. SAMFORD—The Section as amended, or as I offer to amend the Section, would leave it just as it is in the old Constitution, which would require the counties to make adequate provision for the poor of the county. As it is reported by the Committee, it has the effect to require the different counties in the State to make adequate provision for all the insane persons, whereas the burden is now borne by the State, and we have adequate provision, as I understand, for that at the insane hospital at Tuscaloosa.

MR. FOSTER—May I ask the gentleman a question?

THE PRESIDENT—Will the gentleman consent to the interruption?

MR. SAMFORD—Yes sir.

MR. FOSTER—I was going to ask the gentleman if it would not be well to amend his amendment by leaving it so that counties would be required to make provision for the care of idiots, they are not received in the hospital.

MR. SAMFORD—I have no objection.

MR. FOSTER—With that addition, I think the amendment is good.

MR. SAMFORD—I will ask the gentleman to prepare an amendment to the amendment so it will have in the word “idiots.”

THE PRESIDENT—The gentleman asks unanimous consent to add the word “idiots.”

MR. SAMFORD—In order to get it in better shape, I will ask unanimous consent for the gentleman from Tuscaloosa to frame an amendment, while I am making my remarks that will meet that part of it.

MR. OATES—The gentleman from Pike took the floor away from me before I had an opportunity of explaining the action of the Committee, which I intended to do, and intended to ask for the elimination from this proposition of insane and indigent idiots. There is no law, as I understand it, for them to be sent to the Lunatic Asylum, whereas, there is a law for the insane persons to be sent there, and indigent idiots should be provided for in the counties as well as poor people.

MR. SAMFORD—Indigent idiots?

MR. OATES—And indigent idiots, by striking out insane persons.

MR. SAMFORD—I will ask unanimous consent to introduce this amendment: “It shall be the duty of the Legislature to require the several counties in this State to make adequate provision for the maintenance of the poor and indigent idiots?”

MR. DUKE—May I ask the gentleman a question?

MR. SAMFORD—Yes.

MR. DUKE—What is the necessity of putting in the Section “indigent idiots?” Does not poor cover idiots as well as insane persons?

MR. SAMFORD—Poor does not cover it. I have known some people who were poor and not idiots. (Laughter.)

MR. DUKE—Perhaps so, but I will ask the gentleman if an indigent idiot is not a poor person?

MR. SAMFORD—Yes sir, I think so.

MR. DUKE—Would not poor cover indigent idiots?

MR. SAMFORD—The word poor is a relative term, as I understand it, and it has not the same meaning or the same effect as the word indigent.

MR. DUKE—Would it not cover the word indigent?

MR. SAMFORD—I don't think it would, and if it did, I don't see the objection to having both in there.

MR. DUKE—Don't you think poor would cover indigent?

MR. SAMFORD—I think an indigent person is poor ordinarily.

MR. HARRISON—I will ask the gentleman from Pike if his amendment would include any person except poor and indigent persons?

MR. SAMFORD—Yes, I think it would.

THE PRESIDENT—The time of the gentleman from Pike has expired.

MR. OATES—The question propounded by the delegate from Chambers is easily answered. The poor are spoken of in this Section meaning the poor people of the county who have to be provided for by the county. That is well understood in our laws, and practice now. There are idiots in the State who are not indigent, or who have property in the hands of guardians, etc., and could not be considered indigent, but where an idiot is indigent, and has no property, that is the class intended to be provided for.

MR. DUKE—I will ask the gentleman if that word idiot would not be provided for under the Section that says the poor shall be provided for?

MR. OATES—My answer to that is, that they have not been, and, furthermore, I am informed that a good many idiots have been sent to the insane asylum where there is no law for it, and they ought to be provided for by the county.

MR. DUKE—Isn't it your construction of the law that they ought to be provided for, where it says the poor, and that would, under the law, include indigent idiots?

MR. OATES—It is susceptible of such construction, but it has not received it, and it makes clear the intention of the Constitution, when we make use of the words "Poor and indigent idiots."

MR. O'NEAL—I desire to offer a substitute.

THE PRESIDENT—The Chair has already recognized the gentleman from Lee.

MR. HARRISON—If I understand the intent of the committee, and that clause, wouldn't it be better expressed so as to have it read for the maintenance of the poor and idiots who are indigent.

MR. OATES—It means the same thing, putting in that word afterwards and I am pleased to say in this connection, in justice



to the committee, the way it came to be reported as it is, "insane persons," was a knowledge upon the part of some of the delegates composing that committee that insane persons were sometimes incarcerated in a jail, and during the delay, incident to obtaining the proper papers, sent them to the lunatic asylum for they intended to provide for, but it seems to me that if idiots of the indigent character, are provided for as well as the poor, that it sufficiently meets the evil now. It will largely relieve, as I am informed, the lunatic asylum of these people, who are sent there as idiots, and give more room for insane, requiring the counties to provide for indigent idiots.

MR. FOSTER—I was going to suggest that the suggestion I made in line with the amendment of the gentleman from Pike, was that it provide for the poor, and also for idiots without regard to whether indigent or not.

MR. OATES—I do not understand.

MR. FOSTER—To provide for the poor, and also idiots without regard to whether they are indigent or not.

MR. OATES—That would be objectionable.

MR. FOSTER—The reason is that there might be a class of persons who are not indigent, but the care of an idiot member of a family is a great burden, and tends to produce pauperism among them. There is no provision as the gentleman stated, for the care of idiots in the Insane Hospitals. Now, there will be ample provision as the gentleman stated, for the care of idiots in the Insane Hospital. Now, there will be ample provision for the insane, just as soon as the property at Mount Vernon is put in shape to receive patients, there will be no trouble, but under the law, the hospital cannot take idiots although there is always applications for them. The point I make is this, that the county ought to provide the place where the idiots can be taken care of. You take a family of ordinary circumstances, the care of an idiot member of a family is a very great burden to them, and just as insane are received in a hospital, there ought to be some provision for the idiots, and that was the reason I made the suggestion to the gentleman from Pike.

MR. OATES—I do not know just how the amendment reads, but I think that this should be made to read "the poor and indigent idiots," and striking out "and insane persons."

THE PRESIDENT—The time of the gentleman from Montgomery has expired.

MR. O'NEAL (Lauderdale)—I offer a substitute for the amendment.

The Clerk read the substitute as follows:

"It shall be the duty of the Legislature to require the several counties of the State to make adequate provision for the maintenance of poor and indigent idiots. The Legislature shall also make adequate provision for the care and maintenance by the State of insane persons.

MR. O'NEAL—My reason for doing that was the information that I had that in almost every jail in the State insane persons are confined on account of the fact that accommodations cannot be secured at the asylum. If that is true, the State ought to be required to make ample provision for all insane persons.

MR. OATES—It is during the proceedings to secure an order to have them admitted into the asylum that they have been incarcerated in the jails. The asylum, however, is the proper place for them, and the laws provide for that now, but I am informed there are a good many idiots there who, as soon as the Legislature could act under this provision would require the counties to provide for the maintenance and the care of indigent idiots as well as of the poor. I suppose they would be transferred from the Insane Hospital to the counties.

MR. O'NEAL—Will the gentleman call my attention to the section which provides for the maintenance of insane by the State?

MR. OATES—It is in every piece of legislation touching the Bryce Insane Hospital.

MR. O'NEAL—It is in the code, but not in the Constitution.

MR. OATES—You don't want to put it in the Constitution any further than that. I have no objection, however, if the Convention sees proper to put it in.

MR. SMITH (Mobile)—As I understand it, there is no ample provision for taking care of the insane at the Insane Asylum. As I understand it, when an application is made to the asylum, they are admitted whenever there is accommodation for them and they are admitted in a certain order and it very frequently occurs that there is no accommodation and that an insane patient is not received, and they must be either taken care of by the county or by their families for very considerable periods of time. I know as a fact that there are quite a number of insane patients today in the poorhouse of the county of Mobile, and have been there for a very considerable period. I do not remember any period when there were not quite a number of insane patients in the poor house, being cared for in our county, and in each and every instance application has been made for admittance of those patients into the asylum and they have failed of admittance.

It seems to me that there ought to be some provision requiring the counties under some limitation to take care of these people.

Now, there are in addition to these in the poor house some few insane persons, palpably so, anyone meeting them can see it, who are not confined in the poor house or the asylum and I suppose the same conditions prevail elsewhere, it is certainly so in our county and it looks to me that there should be provision to remedy it. I suppose sometimes they could be forced upon the asylum, but as a matter of fact they are very frequently declined.

Mr. Lomax here took the Chair.

MR. O'NEAL.—The purpose of my substitute was to require the counties to take care of the poor, and of indigent idiots, but to require the State to make provision for the care and maintenance of insane persons. It would then be the duty of the Legislature to provide that, pending admission into the asylum at Tuscaloosa, the State should provide for the care and maintenance of insane persons, but the duty of the county, under this substitute, is confined to the maintenance of the poor of the county and of indigent idiots. I think the State itself ought to care for the insane. The burden ought not to be imposed upon counties to keep insane people in the county jail at the expense of the county.

MR. OATES—I have not prepared any amendment, but your amendment goes to the extent of authorizing the Legislature or requiring them to make provision for the care of indigent idiots at the State Asylum. If it required an additional building and the Legislature would have the power to require the parents of such, or the guardians, wherever they owned any property, to pay for it, some provision of that kind, I think a very humane one.

MR. O'NEAL.—My amendment followed the Section as offered by you to require the county to provide for poor and indigent idiots. Is it your idea now that the State should care for idiots in each county that are indigent?

MR. OATES—No, the county.

MR. O'NEAL.—Well, that is the substitute that I offered, but I go further than you by providing that the State shall take care of all insane people, whether before their admission to the asylum or after their admission. As the gentleman from Mobile has correctly stated, nearly every jail in this State has indigent insane people who are poor who are kept there because there is no room in the asylum for them, and I think it the duty of the State to build additional accommodations, if necessary.

MR. OATES.—The provision made by the last Legislature converting Mount Vernon into an insane hospital for the negro insane will give much more room, I am told, and greatly relieve the pressure upon the asylum, but what the Committee wanted to do was to relieve the State of the temporary care of the insane, if that could be provided for by requiring the counties to do it.

MR. O'NEAL—I think the State ought to do it even temporarily.

MR. FOSTER—I want to ask this question, if indigent idiots would not come within the class of poor without stating indigent?

MR. O'NEAL—I don't think they would, because every county has a poor house for the poor and needy, but it doesn't follow, as the gentleman from Pike stated, that every poor man is an idiot.

MR. FOSTER—But it follows in most cases that every idiot is poor and indigent.

MR. ASHCRAFT—The amendment offered by the gentleman from Lauderdale to the Section as reported by the Committee, would require the State of Alabama to care for insane persons evidently at the expense of the State, no matter what estate those insane persons might possess. The Section as reported by the Committee provides that it shall be the duty of the Legislature to require the several counties of this State to make adequate provision for the maintenance of poor and insane persons. It does not say "temporarily;" it does not say "for one year;" it does not say for "poor insane persons," it says the county shall be required to make adequate provision for the maintenance of insane persons, and I am quite sure we don't want to impose any such burden as that upon the counties. Now, the amendment offered by the gentleman from Lauderdale provides that the State shall make adequate provision for the maintenance of insane persons. It does not say that the State shall require insane persons to have property to contribute to the expenses of their maintenance at all, and I am quite sure this Convention does not want to adopt either of these provisions, and I think the amendment offered originally by the gentleman from Pike, striking out the words "indigent idiots and insane persons" is the thing we ought to adopt. It leaves it clear, and the Legislature will still have authority to provide for insane persons under such rules and regulations as it may from time to time think respond to the demands that humanity made upon the State of Alabama.

MR. COLEMAN (Greene)—I prefer the amendment offered by the gentleman from Pike to any amendment that has been suggested. It seems to me, however, that we should keep the Legislature in full authority over this question so far as it is limited by the Constitution. If any gentleman will consult his Code lying before him, Sections 2549 and 2550 he will see that there have been regular provisions made not only for the insane, but for idiots also, and the order in which they shall be received. Now, it seems to me, if you insert a provision here imposing the duty upon the county, you will relieve the authorities at Tuscaloosa, Mr. Vernon, or elsewhere, from a great deal of the duty imposed upon them by the law already, and which they ought to bear. When we leave the

organic law and enter the domain of legislation, we should be very careful. I am sure if you will consult the sections to which I have referred, you will see that the whole question has been covered, and the only reasons why the insane persons are not received is because of want of provision or appropriation already made. At this time, with the additional provision which the State would enjoy at Mt. Vernon, there is no necessity, and it would be a manifest injustice, as pointed out by the gentleman who last addressed you, to impose this burden upon the counties, when we are making large appropriations every year for the protection of this class of people by the asylum at Tuscaloosa and Mt. Vernon. I have been requested to read Section 2550.

Section 2550: In order of admission into the hospital, when its means of accommodation are crowded, preference shall be given the recent curable cases over chronic or incurable. Among those to whom preference shall be last given, shall be idiots, or any who have been imbecile and weak-minded from childhood; to those who are subject to epileptic convulsions; and to those who temporary insanity is produced by the injurious use of alcoholic drinks or opiates.

I, therefore, move to lay the amendment offered by the gentleman from Lauderdale on the table.

MR. FOSTER—Will the gentleman withdraw his motion for a moment?

MR. COLEMAN—Yes, sir.

MR. FOSTER—It is true, as the gentleman from Greene has said, that that section does make provision for the acceptance into the insane hospitals of idiots, but practically it is of no value. There are at present about 1,600 patients in the Alabama Hospital. The superintendent of the hospital estimates that there are over 3,000 persons in the State of Alabama who ought to be cared for either as insane or idiots. It is true that it is a mere matter of appropriation—a mere matter of providing means for taking these people in, but the means now provided do not admit of taking all those people who ought to be under the care of experts in that line of business into the Alabama hospital as the law now is.

MR. SOLLIE—Is it not a fact that the Legislature now has ample authority to deal with the proposition and to make all necessary provisions?

MR. FOSTER—I think that is unquestionable.

MR. SOLLIE—Have they been so derelict in their duty as to make it necessary for us to go aside in the Constitution to direct their actions in the matter?

MR. FOSTER—My view of these mandatory provisions as to legislation is this: That if the framers of the Constitution think it is so important, they ought to make it incumbent upon the Legislature—make it their duty to provide for this; then it is for the Legislature, and, so far as I am concerned I do not care whether that provision is here or not. I think the Legislature will always take care of these people to the best of their ability, but when we attempted to put the provision in there in its present shape, I was opposed to it, because I did not want to see a mad house established in each county in this State, without the means of caring for them. That would create in a few years the greatest scandal the State of Alabama has ever heard. I believe if the true history of the poor houses of this State was made public today, that the facts would shock the State of Alabama from one end to the other. I do not believe in counties caring for any class except the poor, and I think there ought to be a State officer—not a county officer, but a State officer—whose duty it would be to go around and inspect these poor houses. My objection to that section was that it would be an attempt to establish mad houses in each county, but I am willing to see the whole thing stricken out and leave it with the Legislature.

MR. OATES—The statute provides for idiots as well as insane. I had not examined it and I was under the impression it did not and I am very willing to see the addition proposed by the committee stricken out.

A vote being taken upon the substitute offered by the gentleman from Lauderdale, the same was lost.

MR. LONG (Walker)—I have a substitute.

The substitute was read as follows: "Amend Section 47 by striking out all the words after the word 'poor' in the second line."

MR. LONG (Walker)—That leaves the section just exactly as it was in the old Constitution, under Section 49, and I think that is far enough to go. I think it is a good compromise to leave it like it is in the old Constitution.

MR. OATES—That is acceptable.

Upon a vote being taken, the substitute of the gentleman from Walker was adopted, and by a further vote the amendment as amended by the substitute was adopted. A vote being taken, the section as amended was thereupon adopted.

Section 48 was read as follows:

Sec. 48. The Legislature shall not have power to authorize any municipal corporations to pass any laws inconsistent with the general laws of this State.

MR. OATES—I move its adoption.

MR. WATTS—I would like to ask the chairman of the committee a question. Does this language as used here prevent the Legislature from granting municipalities the right to pass laws for the local government of such municipalities?

MR. OATES—It is just as it has been in the Constitution of 1875—all the time.

MR. WATTS—I understand that.

MR. OATES—It certainly would not, then. It has never been so construed.

MR. WATTS—But we have passed a lot of provisions in reference to local legislation, and I call attention to that and ask whether or not it will interfere with those provisions.

MR. OATES—I do not think there would be any conflict. I move the adoption of the section.

And upon a vote being taken the section was adopted.

Section 49 was read as follows:

Sec. 49. In the event of annexation of any foreign territory to this State the Legislature shall enact laws extending to the inhabitants of the acquired territory, all the rights and privileges which may be required by the terms of the acquisition, anything in this Constitution to the contrary notwithstanding.

MR. JONES (Wilcox)—I have an amendment.

The amendment was read as follows:

Amend Section 48 by striking out in lines three and four “anything in this Constitution to the contrary notwithstanding” and add “should the State purchase such foreign territory, the legislature, with the approval of the Governor, shall be authorized to expend any money in the treasury not otherwise appropriated, and if necessary to provide also for the issuance of State bonds to pay for the purchase of said foreign territory, anything in this Constitution to the contrary notwithstanding.”

MR. JONES (Wilcox)—The last legislature passed an act in reference to the annexation of West Florida to the State of Alabama.

I examined the Constitution of 1875, and I saw that there was no provision made in that Constitution for the payment for any territory that might be annexed to the State of Alabama. I found the identical provision that appears in the report of the Committee in all the Constitutions of this State, 1819, '61, '56, '68 and 1873, but in none of those Constitutions is there anything said about how such territory shall be paid for if annexed.

Now I offered an ordinance about ten or twelve days ago in reference to this matter, and the Committee on Legislation did not succeed in getting a quorum, and this amendment is offered at the instance of the members of the Committee who were present and at the suggestion of the Chairman, so that if we find it possible, which is very remote to annex territory to the State of Alabama during the existence of the Constitution which we are now framing, that the legislature will have the right to provide for the payment of the foreign territory that may be annexed. It is for that purpose that I offer the amendment.

MR. OATES—There is a remote probability I will say, of the annexation of West Florida to the State of Alabama, I do not think that there is any very great probability of it at an early date, but in the event that it should be done, this provision may be quite necessary and if such annexation is not accomplished the provision will hurt nothing. It is harmless, and therefore it seems to me that the amendment ought to be adopted. It is quite true that the ordinance was referred to the Committee on Legislative Department, but not succeeding in getting a quorum the delegate from Wilcox was informed of that fact and advised he had better present it as an amendment in the shape in which it is now presented. Unless some gentleman desires to discuss it further, I move the previous question on the adoption of the section and amendment.

MR. SMITH (Mobile)—I would like to ask the gentleman—

THE PRESIDENT PRO TEM—Does the gentleman yield?

MR. OATES—Yes, sir.

MR. SMITH (Mobile)—What is your construction of the provision as to rights and privileges? Is it not intended to extend to citizens brought in by annexation, privileges and rights different from those which other citizens of Alabama enjoy?

MR. OATES—I think not. I think it is intended to extend to them any rights they may have under the law as it existed when citizens of another State, but all of that would be adjustable by the legislature. It is intended to authorize the protection of the inhabitants of such acquired territory in all the rights and privileges which they have in respect to contracts and otherwise, while in another State and under the laws of that State.

MR. SMITH (Mobile)—It seems to me that under the Federal Constitution, as well as under the provisions of our own Constitution all of the contract and property rights of those who may become citizens of Alabama by annexation of territory, are fully and entirely preserved. I do not know what authority the legislature would have to annex territory to the State of Alabama and stipu-



late for any special right or special privileges to the citizens brought in by annexation.

MR. COLEMAN (Greene)—I would like to ask the gentleman whether in his opinion, in the event Alabama acquires territory, the Constitution of the State follows the flag?

MR. SMITH (Mobile)—I am not as familiar with the flag of the State, and do not know where the flag of the State may go, but I believe the constitutional provisions of the State of Alabama would apply to anybody who became a citizen of the State of Alabama, whether by annexation or otherwise.

Now, Mr. President, as I was saying, this provision, it seems to me, authorizes the legislature to acquire territory and stipulate in that acquisition for rights and privileges that are forbidden to the citizens of Alabama by this Constitution. It expressly provides that the legislature "shall extend to the inhabitants of the acquired territory all the rights and privileges which may be required by the terms of the acquisition, anything in this Constitution to the contrary notwithstanding." Now, I do not know what the purpose of that is, but it is certainly broad enough to justify the legislature in stipulating in the articles of acquisition that persons may have superior rights and privileges, and different from other citizens of this State. That seems to me to be the effect of it, and unless there is some other explanation of it that can be made, and maintained I shall be opposed to it. I am opposed to putting any class of citizenship upon a different basis and to be governed by a different law and different Constitution from the balance of the citizens of the State.

MR. OATES—I should think that is intended to maintain rights and privileges which are in the nature of vested rights. Of course if they become citizens of Alabama, they would have to conform to the laws of Alabama, and they would not have any extra rights or privileges extended to them. It would be only such as they had up to the time of the acquisition just like any other law that is declared not to be retroactive. It is for the preservation of the rights and privileges they had up to the time of the acquisition. I do not see anything in conflict, and this section is in the present Constitution, and was adopted no doubt in view of the same thing that is now spoken of, the probable acquisition of West Florida. It was deemed by that Convention to be sufficiently broad, and not to present the difficulty referred to, and I cannot see that it does now. The inquiry of the delegate from Mobile is not positively asserted, but he is rather speculative in his argument. He says nothing against the amendment offered by the delegate from Wilcox, and I move the previous question on the section and amendment.

I will withdraw that for a moment, for the gentleman from Barbour.

MR. DENT—It seems to me there is something in the criticism made by the gentleman from Mobile, and I propose to strike out the latter part of the Section the following words: "Anything in this Constitution to the contrary notwithstanding," and add the following in their place: "Not inconsistent with this Constitution."

THE PRESIDENT—The gentleman from Barbour will please send up the amendment.

The Secretary read the amendment to the amendment by Mr. Dent: "Strike out all the words in this Section after the word 'acquisition,'" and add the following: 'Not inconsistent with the Constitution.'"

MR. SOLLIE (Dale)—Mr. President, I think, too, there is a great deal in the suggestion of the gentleman from Mobile, and that in the language to which he objects there is the possibility of a condition arising which might lead to considerable difficulty.

MR. OATES—Will the gentleman allow an interruption?

THE PRESIDENT—Does the gentleman consent to be interrupted?

MR. SOLLIE—Yes sir.

MR. OATES—The amendment offered by the gentleman from Wilcox strikes out these words of the Section as reported, and adds them at the end, and I presume that the amendment offered here will strike them out at the end and insert the words suggested at the end of the amendment.

THE PRESIDENT—At the end of the amendment of the gentleman from Wilcox?

MR. OATES—Yes sir.

MR. SOLLIE—And in either case, Mr. President, it still occurs to me that now is a good time to cure the defect and avoid any possible difficulty which might arise under the Section as it stands in the present Constitution, and is proposed in the one we are making. While it is true that any arrangement which might be made between Alabama and any other State in ceding to us territory by which some of the citizens would enjoy any civil rights not enjoyed by all the other citizens of the state would be unconstitutional and void under the Fourteenth Amendment to the Federal Constitution, which specifically protects all the privileges and immunities of the citizens and secures to them the equal benefits of the laws, we are acting here in several matters upon the assumption that the political rights of citizens are not thus secured and

protected by the Federal Constitution, and it is my opinion that they are not. And, if not, it is possible, and might come about that in the great eagerness to acquire new territory in some cases the Legislature would enter into arrangement in its acquisition by which the equal political rights of all the people would be overlooked and special privileges given. I admit that it is not probable that such would be the case; but it might happen. Political rights might be claimed and an attempt made to preserve them to persons coming in with new territory, as a part of the arrangement by which the territory would be ceded, which all the other people would not have, and which would be very objectionable and hurtful to us as a people. I admit that it is not very probable; but if there is no probability whatever of it, if there is no danger of it, and it cannot arise, or if it could not be lawfully done, and there can be no political privileges enjoyed by a portion of our people which all the others do not enjoy, and if such an attempt in practice or such a provision in our Constitution would be unconstitutional under the Federal Constitution then we are remitted to the other proposition that there is no need or use for the provision leaving the suggestion open to invite action. Being a thing which cannot be done it simply cumbers our Constitution and should be stricken from it. Let's strike it from it, and not leave to our Legislature an invitation to attempt to do something which under the Federal Constitution they cannot do, and not seem to make way for the conferring on any part of the people any privileges or immunities of any kind which all the others do not enjoy.

It occurs to me that the amendment offered by the gentleman from Barbour is timely and good, and will take from the Constitution as it now stands a provision which is very useless, because it cannot be executed, or, if it can be executed, might become harmful and hurtful. I, therefore, support the amendment offered by the gentleman from Barbour.

MR. OATES—I now move the previous question on the section and the amendment.

The main question was ordered.

MR. SANFORD (Montgomery)—I call for the reading of the amendment.

The Secretary read the amendment as follows: "Strike out the amendment submitted by the delegate from Wilcox the word 'anything in this Constitution to the contrary notwithstanding' and add the following: 'Not inconsistent with this Constitution.'"

Upon a vote being taken the amendment was adopted.

The question recurring upon the adoption of the amendment offered by the gentleman from Wilcox, as amended, the same was adopted.

The question recurred upon the adoption of the section as amended.

MR. SANDERS (Limestone)—I ask that the section be read as amended.

The Secretary read Section 49 as amended as follows: "In the event of annexation of any foreign territory to this State, the legislature shall enact laws extending to the inhabitants of the acquired territory, all the rights and privileges which may be required by the terms of acquisition not inconsistent with this Constitution. Should the State purchase such foreign territory, the legislature, with the approval of the Governor, shall be authorized to expend any money in the treasury not otherwise appropriated, and if necessary, to provide also for the issuance of State bonds to pay for the purchase of such foreign territory, anything in this Constitution to the contrary notwithstanding."

A vote being taken, the section as amended was adopted.

Section 50 was read as follows:

Sec. 50. The legislature shall not tax the property, real or personal, of the State, counties or other municipal corporations, or cemeteries; nor lots in incorporated cities or towns, or within one mile of any city or town, to the extent of one acre, nor lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for public schools or for purposes purely charitable.

MR. WATTS—I offer an amendment to Section 50. "Strike out all after 'cemeteries' in the second line."

THE PRESIDENT—The question is upon the amendment offered by the gentleman from Montgomery to Section 50.

MR. WATTS—The object of the amendment is because in the taxation report, there is a provision the same as contained in the old Constitution: "Provided this section shall not apply to institutions or enterprises devoted exclusively to religious, educational or charitable purposes, and the provision I propose to strike out seems to be inconsistent with our former action, and therefore I move to strike the words out of this section. It seems to be inconsistent with our former action."

MR. OATES—This section is reported by your Committee just as it exists in the present Constitution with one exception. The exemptions from taxation are of certain institutions, fair grounds, fair associations and property used for private schools, stricken out of this section and otherwise reported as it stands in the present Constitution. They are stricken out so that the legislature may deal with them and subject them to taxation as it sees

proper. I think, sir, this section as reported, is right and the amendment offered by my colleague, to strike all of the latter part, because he thinks that it has been provided for in some other section, I do not think it necessary. If there should be a conflict between them, that is reconcilable hereafter, we have a Committee to pass on such matters and I hope, therefore, that the amendment will be voted down. I move the previous question on the section and the amendment.

The main question was ordered and upon a vote being taken, the amendment offered by the gentleman from Montgomery was lost, and the section as reported by the Committee was adopted.

The Secretary read Section 51 as follows:

Sec. 51. The legislature shall, by law, prescribe such rules and regulations as may be necessary to ascertain the value of personal and real property, exempted from sale under legal process by this Constitution, and to secure the same to the claimant thereof as selected.

MR. OATES—That is the same as in the present Constitution, and I move its adoption.

Upon a vote being taken, the section was adopted.

The Secretary read Section 52 as follows:

Sec. 52. The State may construct and own works of internal improvement, having for their object the conveyance or transportation of passengers and freight, but shall not sell or mortgage such improvement, nor lend its money or credit in aid of such; nor shall the State be interested in any private or corporate enterprise, or lend money or its credit to any individual, association or corporation.

MR. HANDLEY (Randolph)—I have a substitute for this Section 52. "The State of Alabama shall not engage in internal improvements nor be interested in any private or corporate enterprise, nor lend its money or credit to any individual, association or corporation.

THE PRESIDENT—The question is upon the adoption of the substitute offered by the gentleman from Randolph.

MR. HANDLEY—Mr. President and gentleman of the Convention. I regard this section the most dangerous section that I have met during this Convention. What do we propose to do in this section? We propose to go into internal improvements, and that means, sir, to build street railways, to construct narrow gauge railways, to construct, erect and build standard gauge railways, steamboats, clean out rivers, navigate rivers, build canals, and a whole lot of internal improvements that I think are unwise. I have

been thinking over the matter, and I do not see how this Constitution can afford to spend the people's money by going into internal improvements—a subject that has been laid upon the table for fifty years. Now, Mr. President, we have a grand State, and to have a section in this new Constitution to build public works, and to go into internal improvements, will be a great mistake, in my opinion. We do not need—the State of Alabama does not need, to go into any business. We have been in business a few times, during her existence, and we always lost money. Now, Mr. President, suppose that we go into this business and spend the taxes collected from the people, to build these various enterprises in Alabama, and to have it in their Constitution that will perhaps stand for twenty-five or fifty years, or perhaps a hundred years. Why, sir, it would be a very dangerous enterprise for the State of Alabama to go into. I trust this Convention will not undertake this job. It is the most objectionable section that I have met during our session here. What we need is to collect enough money from the people to defray the expenses of this government, and I want to do that, and if necessary have a hundred thousand dollars in the treasury in case of emergency, but to collect any more money from the people of Alabama is unnecessary and undemocratic. I trust this Convention will consider this matter. Now, sir, we have a grand State that is divided into three subdivisions, you might say—the lumber region, the agricultural region and the mineral region. But a few years ago lumber was down to five or six dollars a thousand; today it is worth from nine to twelve dollars a thousand. The State is prosperous, the agricultural region is prosperous, and the mineral region is prosperous, but at no time is it necessary for this Constitution to have a section in it for the State of Alabama to go into internal improvements. Now, that means a great deal.

Internal improvements, public works. To belong to the State of Alabama? Why some wise men, some great men, some enterprising citizens might say that we will turn the Tennessee River through Alabama, that we will build a canal that will bring it by Birmingham and by Montgomery and put it into our rivers here and carry it on to Mobile, and I will tell you, Mr. President, it would be a grand enterprise, and would have a great many friends in Birmingham, Montgomery and Mobile and all along the route, and you might destroy the credit of the State by going into some of these grand enterprises, which has been done. Alabama loaned her credit a few years ago and she came out minus by many millions of dollars, and she opened the State treasury way back yonder, and went into the banking business and came out minus again, and I tell you, it is bad policy, it is bad judgment for this Convention to insert a clause in the Constitution of the State of Alabama that the State officers may go into internal improvements.

The question, sir, was settled in Henry Clay's day and time. Now, sir, I have been somewhat enterprising myself, and I have struck a great many enterprises that did not pay worth a cent, and I tell you it is dangerous for the State of Alabama to undertake a thing of this sort, and I trust that my amendment, where it says the State of Alabama shall not go into any of these enterprises, will be adopted, and that she shall not loan her credit, nor open the vaults of her treasury to anybody. She has enough business to attend to in looking after her own interests, and hence it is dangerous—it is wild cat—to go into business of this character by this State. Why, it a very dangerous thing, in my opinion, and hence I trust this section will not be adopted. I have never been able to find out who the author was. (Laughter).

MR. SANFORD (Montgomery)—I am the author of it.

MR. HANDLEY—And you want to go into internal improvements?

MR. SANFORD—I do.

MR. HANDLEY—Why, that is a question passed years ago, and it is a thing that Alabama will never do, in my opinion, establish public works and improvements, by the State; spend the people's money to build canals and to build railroads, and to build furnaces. Why, I would not be surprised if you should go on into the mining business, and into the furnace business, and into the cotton mill business, and bore for oil. (Great laughter).

It is a dangerous precedent. Let individuals do all this sort of work. Keep your State clean and let her have a credit that is unimpeachable by anybody. That is my doctrine, and I think it is the doctrine of the Democratic party, that we leave out internal improvements by this State. It was set aside fifty years ago, in a national election for President, and I trust that my distinguished friend will not urge this matter, and if it is urged, I trust the Convention will vote it down.

MR. SANFORD—When I introduced that section, I had in my memory the great works and internal improvements in other States, that have been of great benefit to the people. My long time and much esteemed friend from Randolph was entirely mistaken in his history. Alabama never entered into a scheme of internal improvements since it was a State of this Union. It did indorse bonds under the radical rule and administration, which did plunge it into large indebtedness—thirty millions of dollars, nearly—but no where in the United States has any party ever said that a State could not go make internal improvements. My friend says it was settled in the days of Henry Clay. He is entirely mistaken. The question did arise in the general parties of America, but it was internal improvements by the general government, to which I am

most strenuously opposed, and to which the people of America have been opposed, except in making navigable streams more navigable by removing obstructions. It is opposed to canals being constructed by the general government, but I never heard of the people of a State being against the construction of canals by itself. Who does not remember the famous canal in New York, built by one of the Clintons, to develop the State, so as to make it the empire—common wealth of the Union, and decrease the taxes of the people by the income derived from it? No man except my friend from Randolph ever thought internal improvements would mean a steamboat or an ox cart. No man ever thought it meant mines, because Alabama owns no mines. It owns nothing except this square upon which this Capitol is built, and the asylum and one or two elymosynary establishments. It owns no mines, no marble quarries, nor granite ledges nor coal measures, nor iron fields nor furnaces. It would be absolutely absurd for such a construction of the proposition to be made. But that it should have the right of constructing roads, within its own dominion, is another question. As I have just mentioned, the Erie Canal of New York State—that glorified that State, and placed it in advance of all in this confederation. Look at Georgia with 138 miles of Western and Atlantic Road running from Atlanta to Chattanooga, that for years and years contributed to the support of the State of Georgia by its income—one of the most prosperous States in all of this Southern country—

THE PRESIDENT—Will the gentleman please suspend for a moment?

MR. SANFORD—Certainly.

THE PRESIDENT—The gentleman from Montgomery will be entitled to the floor on the afternoon session. He has consumed one-half of his time.

Leaves of absence were granted as follows: Mr. Kirk of Colbert; Mr. Searcy for today; Mr. Stoddard for today.

The Convention adjourned until 3:30 p. m.

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#### AFTERNOON SESSION.

The Convention was called to order by the President, and the roll being called showed the presence of eighty-eight delegates.

MR. HANDLEY—I rise for the purpose of offering a substitute for my substitute, which is the wording of the old Constitution, and I have left out a few words in my other substitute.

The Secretary read the substitute as follows:



"The State shall not engage in works of internal improvement nor lend money nor its credit in aid of such, nor shall the State be interested in any private or corporate enterprise or lend money to any individual, association or corporation."

THE PRESIDENT—The gentleman asks unanimous consent to amend his substitute. Is there objection? The Chair hears one. It is so ordered.

MR. HARRISON—Before proceeding with the regular order, I desire unanimous consent of the Convention for the Committee on Corporations to sit during the afternoon session.

Consent was given.

MR. BROOKS—I wish to move to reconsider the vote by which Section 47 was passed. Let it go over until tomorrow morning.

THE PRESIDENT—The special order for this afternoon is consideration of the report of the Legislative Department.

MR. SANFORD (Montgomery)—Mr. President, when I announced that I had prepared an ordinance containing the substance of this and more besides, my estimable friend from Randolph was very much shocked. He knew that I was, if I had any distinction, a thorough-going States rights man, an Arab of the Arabs on this subject, and he therefore could not understand how I should favor internal improvements. The error was in my friend's confusion of the two systems. One is by the general government and the other is by the States. I am utterly opposed to internal improvements by the Federal, and I am just as earnestly in favor of it by the State Government. If my friend will take the pains to read Monroe's veto message upon the Cumberland Road in 1822, he will see the two systems of internal improvement thoroughly discussed; he will see why the general government has no power to make improvements in the State, and why the State has that power. To go forward, Mr. President, with this argument, I was about saying that the benefit to the people of Alabama will be almost incalculable. I had called attention to the great benefits of the Erie Canal to the people of New York, and suggested the number of towns that had come out of the woods and stood by its banks, full of enterprise, intelligence and thrift and prosperity. Now, Mr. President, the same remarks would apply to the State of Georgia. Many years ago Georgia built a road known as the Western and Atlantic Road, a distance of 138 miles from Atlanta towards Chattanooga in Tennessee. For many years it paid a very large part of the expenses of the State Government of Georgia, and even in 1899 its income was \$582,732.33, clear of all expenses, that is quite one-fourth of the income which Alabama derived from its taxes. Such a road as that would greatly relieve the people of Alabama from

burdens. Has she not persons convicted of crime? We have today 1,763 convicts. Why could they not be so employed? If the great corporations of Alabama can hire them at an average of \$9 per month, feed, clothe, shelter, guard them and give medical attendance and still make it profitable, could not Alabama do the same thing when it has no hire to pay, which would amount to one hundred and eighty odd thousand dollars; and if that is so, why not employ them in works of internal improvement. The treatment of them would be more humane. From time to time reports of your examiners show the utmost cruelty in some prison camps where they are hired, that might be compared to Siberia. Mr. President, were this system to be adopted, the camps in Alabama would be as clean as an icicle as compared to those prison camps, and as innocent and harmless as a dove cot. To adopt this policy is a matter of humanity, and see the advantage of it. For instance, you employ them for the construction of a railroad running north from this point to Chattanooga on the eastern bank of the Coosa River, which runs through a country of great fertility, of marvelous variety of productions, both vegetable and mineral. It is estimated that 100,000,000 feet of longleaf pine could be supplied for 100 years, annually, and not exhaust the forests. It would open mines of coal, iron, limestone, marble and all the other products that contribute to the wealth of a State. You would find little towns growing up along its line as it rushed from here northward just as you have seen foam balls lodge by the side of rapid flowing streams. They would be full of intelligence and thrift, and of every kind of useful employment. What objection can be made to it? Let me revert to the fact that Alabama has no property except this square, where the State House rests, and some eleemosynary institutions. It holds property as a trustee, and what would prevent it then, paying so much royalty to the University of Alabama, for its coal mines, and after it paid 5 or 10 cents or whatever the Legislature might have determined upon, for digging coal to put the residue, after the royalty was paid, into the Treasury of the State, and thereby relieve the people of Alabama of taxes.

THE PRESIDENT—The time of the gentleman has expired.

MR. SANFORD—I thought I had half an hour from the beginning, excepting on an amendment. I am not speaking on the amendment, but on the article itself. I offered no amendment.

THE PRESIDENT—There is an amendment pending, and the gentleman is supposed to be speaking to the amendment offered by the gentleman from Randolph.

MR. SANFORD—I was speaking upon the original. I don't care about the amendment, because that is in the old Constitution. I was only showing why this section should be adopted.

MR. O'NEAL—I was going to suggest as the Chairman yielded his time to the gentleman, would he not be entitled to thirty minutes?

THE PRESIDENT—The Chairman himself would not be entitled to but ten minutes under discussion of the amendment.

MR. BROOKS—I move that the gentleman be allowed ten minutes more.

THE PRESIDENT—The question will be upon the suspension of the rules.

MR. SANFORD—I only want to say that we could build a canal from Birmingham to the Warrior River and from Gadsden to the Tennessee.

THE PRESIDENT—Possibly the gentleman from Macon might yield a minute to the gentleman from Montgomery.

MR. COBB—I will yield five minutes to the gentleman.

MR. SANFORD—I am very much obliged to you, it accords with your chivalrous character. I was going on to say you could build the canal from Birmingham to the Warrior River and the tolls upon the canal as the fare upon the railroad would abundantly pay all expenses and contribute to the welfare and wealth of the State. You could dig this canal from Gadsden across to the Tennessee River, a project that has been agitating Alabama for more than forty years. It would bring water into the Coosa that would hear all of its freight over the many shoals and obstructions in that river, bring down iron, timber, marble to Montgomery and on to Mobile and thus enable our people to compete still more successfully with the iron foundries in Pittsburg, Ohio, Illinois and other portions of the United States. It would be a great blessing to our people, it would give employment to them, it would increase the value of taxable property along the country through which these rivers flow, it would help in every particular, and enable the schools to be more prosperous by the greater income of the State. Take it all in all the wisest thing for Alabama today, imitating New York many years ago, in its great achievement of the Erie Canal, which was opened in 1823; and imitating Georgia, which built its railway many years ago, and thus became one of the leading States is to adopt this section proposed by the Committee of able men.

MR. COBB—I suppose the gentlemen present have made up their minds, and I therefore move the previous question on the original proposition and amendments.

MR. OATES—I hope the gentleman will not do that because the Committee has not been heard from.

**THE PRESIDENT PRO TEM**—The question is on the previous question, the original section of the Committee and amendment. Shall the main question be now put?

A vote being taken, the previous question was ordered.

**MR. OATES**—I yield my time to the delegate from Sumter, a member of the Committee, to speak for the Committee.

**MR. ROGERS (Sumter)**—Mr. President and gentlemen of the Convention, I ask your indulgence this evening, because I feel that I am speaking in favor of a proposition to many who are prejudiced against its adoption. It will be sneered at and laughed at as being mothered in the Ocala platform by men who have been closer to it and therefore have more reason to be familiar with the Ocala platform than the speaker, but Mr. President, I want to say to you that the truth is always true and falsehood always false, no matter whether it be spoken by the President of the United States or by the sorriest tramp within the confines of its territory. The words spoken upon the Sea of Gennessaret by the Man of Calvary, would have been no less true had they been spoken by the lowliest fisherman who ever cast a net into the sea of Galilee. We are here to propose to you what is supposed to be an innovation. The doctrine of internal improvement has been sneered at by the gentleman from Roanoke, who, I am told, has the reputation of having made some money. The man who has made money is entitled to that consideration, which the possession of money gives him, but against that opinion I want to hold aloft the colossal figure in the United States Senate from Alabama, the Hon. John T. Morgan, who is as poor today as when he entered the service of his State forty years ago, and whose opinion on matters of that sort are entitled to as much consideration as that of Croesus. What would we do with the question of internal improvement if we denied this to the United States Government? What would become of appropriations for the opening of harbors and ports in the United States? That is simply one form of internal improvement. Another question, Mr. President, what would we do about the Nicaragua Canal, if we denied the right of internal improvement?—a right so ably fought for on the floor of the Senate of the United States that the Government has the right to own and build without the consent of any nation on earth.

**MR. VAUGHN**—Where are you going to get the money to do all that business?

**MR. ROGERS**—I will answer that remark. A few days ago there was an ordinance introduced looking to the convict system of Alabama. We will take the convicts of the State of Alabama and will prepare roads throughout the State; we will dig canals throughout the State, that will stand for future prosperity of our

people, and in that way, and only that way, can you use the Convicts of the State of Alabama and not come in conflict with free labor. It would be one of the greatest movements ever made in this State. I want to call attention to an evil that is growing in this country, and which if not stopped is going to result in one of the greatest oppressions that has ever been placed upon any people. The greatest consolidation of transportation companies is going to result in less than thirty years from now, in the ownership throughout the United States by not more than four men, of all the transportation companies in the United States. This power placed in the hands of one President, consolidating this immense influence—this President appointing sub-Presidents and managers throughout the United States, and the thousands and thousands of employes employed, will dominate legislation. The power of the President of the United States in comparison with this vast patronage will sink into utter significance. The way of that syndicate is being pointed out by J. Pierpont Morgan in the purchase of shipping lines across the sea and the buying or breaking down of railroad competitors. Mr. President, later on in this Convention, there will be introduced here ineffectual, faulty and vicious legislation against trusts, but this ordinance, which will be rejected, is the one way in which we can confront trusts. No matter what sort of law you may place upon the statute books, unless you give power to the State to enforce the statute, it is absolutely worthless. You may place all the law you wish on the statute book to suppress crime, and with no officer there to enforce the law, it falls to the ground. We may never have to use this power, but it will stand in the Constitution of Alabama as a menace to those corporations who may attempt to coerce the people of the State of Alabama. They will know that the people of the State of Alabama can engage in the building of railroads to thwart their efforts. This is not dangerous legislation, except to greedy corporations. The gentleman from Roanoke says it is dangerous, but so is a mule, but we don't dispense with a mule because he is dangerous. We do not propose to put men in charge of the affairs of the State of Alabama whom we cannot trust. We do not propose to put fools in charge of Alabama, and we expect some times that the wise men of Alabama will be in control of its affairs. I have heard no argument urged against this measure, except that it is undemocratic and except that it is dangerous. Let us take up the undemocratic part of it. The word "democrat" or "democracy" is a relative term. It gets its life and definition every four years in this country. When we meet in national convention that which we put in our platform is democracy. I have heard men talking about Thomas Jefferson, and I wondered if his bones did not turn over and rattle in his grave. Why, Mr. President, the power of the Democratic party and the duty of the party is to rise up in its might and majesty and meet issues as they come, and not be circumscribed by what

some man said one hundred or two hundred years ago. If there is a fundamental principle in the Democratic party it is that people should rule, and it is the only fundamental principle at the foundation of any party in a fair government; the right of the majority to rule. I knew that we were going to be met on this floor by the argument that it is undemocratic and dangerous. Now, why dangerous? Because the gentleman from Roanoke says so? He says this State has been in business and lost money. I want to say that individuals at that time in business in Alabama lost money. There was at that time a financial crisis that rocked this country from California to New York and prostrated every bank in the State of Alabama except one bank in Mobile.

Suppose a man said, I was in business once and lost my money and therefore, I am not going back into business any more. What sort of a man would you consider him to be? Mr. President and gentlemen, we must profit by the mistakes we have made, not that we should confine ourselves to legitimate rules of business. I cannot see why men should object to this provision unless they are afraid to trust the people of the State of Alabama.

MR. VAUGHAN—Suppose the State should build a railroad and it proved a bad investment, under the section "but shall not sell or mortgage such improvement"—then what becomes of the investment?

MR. ROGERS—The State of Alabama would own the investment. Did you ever buy a mule that was a losing investment? That provision is put in there for the purpose of preventing the State from selling it or mortgaging it to outside parties, lending its aid to outside individuals. The argument, because a man might go into a business and find it a losing one might apply to any business on earth. How can you tell whether you will win or lose until you go into it.

MR. DUKE—I would ask the gentleman if this does not prevent the selling of the improvement?

MR. ROGERS—As a matter of course yes, sir.

MR. DUKE—If the State owned a road under this provision, it could not sell it.

MR. ROGERS—It could not sell it, no sir.

MR. DUKE—Even if it had an opportunity to sell it, so as to get out of a bad investment it could not sell it.

MR. ROGERS—It can lease it, but not sell it. The reason is whenever there is a necessity to build a line of this sort it is for the purpose of meeting competition, for the purpose of keeping down freight rates, and even if the State should run it at a loss it

would be a great benefit to the State of Alabama in keeping down freight charges and unjust discriminations.

MR. KYLE—I will ask you if it is not a fact that the Western and Atlantic Railroad is owned by the State of Georgia and has never been a failure but has made money from the day that it was built?

MR. ROGERS—Such is my information.

MR. KYLE—And is it not a fact that the Cincinnati Southern was built by a city of 250,000 people at an expense of \$20,000,000 and it has done more to develop that city than anything in the world.

MR. ROGERS—I am much obliged to the gentleman for calling my attention to this further argument in favor of internal improvements. We grant to the counties of the State the right to make internal improvement. They tell me the right of internal improvement is undemocratic—tell me that it is foolish to grant to the greatest political division the right which is given to the smallest subdivisions of it. Tell me why the father should not have the right to do the thing that he permits to his daughter or to his son, and then I will tell you why the State of Alabama should not go into a business which is permitted to the counties and to the cities of the State of Alabama. We should not prevent the people of the State defending themselves against the unjust aggression of corporate greed in the only possible manner in which it is practicable; combining the whole resources of the State in a common defense. We should not put foolish laws upon our statute books against monopolies and throw away the one weapon which we have to enforce justice at the hands of the transportation companies.

Mr. Pettus took the chair.

MR. EYSTER—I call for the ayes and noes.

THE PRESIDENT PRO TEM.—The ayes and noes are demanded on the substitute. Is the call sustained.

The call was sustained.

MR. WILSON (Washington)—I was absent from the hall when the substitute was offered. I would like to hear it read.

MR. SPEARS—I move to lay the substitute on the table.

THE PRESIDENT PRO TEM.—The previous question has been ordered and a motion to table is out of order.

The substitute was read and upon call of the roll the vote resulted as follows:

## AYES.

Almon,  
Altman,  
Banks,  
Barefield,  
Bethune,  
Blackwell,  
Brooks,  
Carmichael, of Colbert,  
Chapman,  
Cobb,  
Cofer,  
Coleman, of Greene,  
Craig,  
Davis, of DeKalb,  
Davis, of Etowah,  
deGraffenreid,  
Duke,  
Eley,  
Eyster,  
Espy,  
Foster,  
Glover,  
Graham, of Montgomery,  
Handley,

Total—70.

Harrison,  
Heflin, of Chambers,  
Heflin, of Randolph,  
Hodges,  
Hood,  
Howell,  
Howze,  
Inge,  
Jenkins,  
Jones, of Wilcox,  
Ledbetter,  
Locklin,  
Lowe, of Jefferson,  
McMillan, of Baldwin,  
McMillan (Wilcox),  
Malone,  
Martin,  
Maxwell,  
Merrill,  
Moody,  
Murphree,  
Norman,  
Norwood,  
O'Neal (Lauderdale),

Opp,  
Palmer,  
Parker (Cullman),  
Pitts,  
Rogers (Lowndes),  
Samford,  
Sanders,  
Smith (Mobile),  
Smith, Mac. A.,  
Smith, Morgan M.,  
Sollie,  
Sorrell,  
Spragins,  
Stewart,  
Tayloe,  
Vaughan,  
Waddell,  
Walker,  
Watts,  
Weatherly,  
Williams (Barbour),  
Williams (Marengo),

## NOES.

Ashcraft,  
Beddow,  
Dent,  
Foshee,  
Freeman,  
Grant,  
Knight,

Total—19.

Kyle,  
Macdonald,  
Mulkey,  
Oates,  
Pettus,  
Reynolds (Chilton),  
Rogers (Sumter),

Sanford,  
Sloan,  
Spears,  
White,  
Wilson (Wash'gton).

## ABSENT OR NOT VOTING.

Messrs. President,  
Bartlett,  
Beavers,  
Boone,  
Browne,  
Bulger,  
Burnett,  
Burns,  
Byars,  
Cardon,

Carmichael, of Coffee,  
Carnathan,  
Case,  
Coleman, of Walker,  
Cornwall,  
Cunningham,  
Ferguson,  
Fitts,  
Fletcher,  
Gilmore,

Graham, of Talladega,  
Grayson,  
Greer, of Calhoun,  
Greer, of Perry,  
Haley,  
Henderson,  
Hinson,  
Jackson,  
Jones, of Bibb,  
Jones, of Hale,



Jones, of Montgomery,	NeSmith,	Robinson,
King,	O'Neill, of Jefferson,	Searcy,
Kirk,	O'Rear,	Selheimer,
Kirkland,	Parker (Elmore),	Sentell,
Leigh,	Pearce,	Stoddard,
Lomax,	Phillips,	Thompson,
Long, of Butler,	Pillans,	Weakley,
Long, of Walker,	Porter,	Whiteside,
Lowe, of Lawrence,	Proctor,	Willet,
Miller (Marengo),	Reese,	Williams (Elmore),
Miller (Wilcox),	Renfro,	Wilson (Clarke),
Morrisette,	Reynolds, of Henry,	Winn,

So the substitute was adopted. The question then recurred upon the adoption of Section 52 as amended, and the same was adopted.

The Secretary read Section 53 as follows:

Sec. 53. The Legislature shall have no power to authorize any county, city, town or other subdivision of this State to lend its credit, or to grant public money or thing of value, in aid of or to any individual, association, or corporation whatsoever; or to become a stockholder in any such corporation, association or company by issuing bonds or otherwise.

MR. OATES—I move its adoption. It is the same as in the present Constitution.

A vote being taken, Section 53 was adopted.

The Secretary read Section 54 as follows:

Sec. 54. There can be no law of this State impairing the obligations of contracts by destroying or impairing the remedy for their enforcement; and the legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State.

MR. OATES—There is no change in that section except in the number. It is as in the present Constitution, and I move its adoption.

A vote being taken, the section was adopted.

The Secretary read Section 55 as follows:

Sec. 55. The legislature shall not enact any law for one or more counties not applicable to all the counties in the State, increasing the uniform charge for the registration of deeds and conveyances or regulating costs and charges of courts, or fees, commissions or allowances of public officers.

MR. OATES—Mr. President, I think that the sense of that section which is new would be greatly improved by amending it in the first line, and I make that motion. After the word "law" to strike out the words "for one or more counties" and in the second line after the word "State" strike out the words increasing the uniform charge for this registration of deeds."

THE PRESIDENT PRO TEM—The gentleman from Montgomery is requested to reduce the amendment to writing.

MR. WEATHERLY—Is not that section covered by a provision in the ordinance reported by the Committee on Local Legislation.

MR. OATES—I don't know, I am not sure, I scarcely think it is.

MR. WEATHERLY—I am under the impression that it is, and if it is, I don't see the necessity for this provision.

MR. OATES—That is striking it out by guess. Have you the section?

MR. WEATHERLY—I have not, I thought you were familiar with it.

MR. OATES—I am not familiar enough to say, we have adopted so many I can't say.

MR. WALKER (Madison)—The 26th section on Article of Local Legislation provides against any special or local act creating, increasing or decreasing the fees, percentage, or allowance of public officers.

MR. WEATHERLY—That is the one I refer to.

MR. WATTS—The article adopted by the Committee on Local Legislation does not prescribe as much.

MR. OATES—No, sir.

MR. WATTS—Therefore, if this is adopted the Committee on Harmony can reconcile the two?

MR. OATES—Yes, I think so. I think the two may be properly put together.

MR. OATES—I offer this amendment in writing:

"Amend Section 55 by striking out in line one, after the word "law" the words "for one or more counties" and in lines two and three the words "increasing the uniform charge for the registration of deeds and conveyances."

THE PRESIDENT PRO TEM—The question is upon the amendment of the gentleman from Montgomery.

MR. CHAPMAN—Do you mean to strike out “or” at the end of conveyances on the third line?

MR. OATES—Yes.

PRESIDENT PRO TEM—The gentleman asks unanimous consent to strike out the word “or.”

Unanimous consent was given.

MR. JENKINS—In the last line the word “allowances of public officers.” Here is the proposition I want to submit to the gentleman from Montgomery. Suppose the legislature should desire to enact a law saying that the cost of feeding the prisoners in the larger counties, Jefferson, Montgomery and Mobile, should be less than in the smaller counties, could they pass a law with this provision in the Constitution, in other words is feeding prisoners covered by the term allowance?

MR. OATES—I think in the general law they can regulate that and make provision, in counties where it is more expensive, but not by a special local act.

MR. JENKINS—They can do it by general law?

MR. OATES—Yes, no doubt about that. I ask that a vote be taken on the adoption of the amendment.

MR. MALONE—I want to ask my same old question: Would this be construed as prohibiting a local law on the whiskey question?

MR. OATES—Oh, no, I do not think it has anything to do with that at all.

A vote being taken, the amendment was adopted.

A further vote being taken the original Section as amended was adopted.

The Secretary read Section 56 as follows:

Sec. 56. The Legislature shall not authorize payment to any person of the salary of a deceased officer beyond the date of his death.

MR. OATES—That is entirely new but plain, and entirely proper. I move its adoption.

A vote being taken, the Section was adopted.

The Secretary read Section 57 as follows:

Sec. 57. The Legislature shall not retire any officer on pay or part pay, or make any grant to such retiring officer.

MR. OATES—It prevents any civil pension list. I move its adoption.

A vote being taken, the Section was adopted.

The Secretary read Section 58 as follows:

Sec. 58. Lands belonging to or under the control of the State, shall never be donated directly or indirectly, to private corporations or individuals, or railroad companies; nor shall such lands be sold to corporations or associations for a less price than that for which it is subject to sale to individuals; provided, that nothing contained in this Section shall prevent the Legislature from granting a right of way, not exceeding 100 feet in width, as a mere easement, to railroads across State lands, and the Legislature shall never dispose of the land covered by said rights of way except subject to said easement.

Mr. Lowe (Jefferson) offered the following amendment: "By inserting on the sixth line thereof, immediately after the word 'railroad' the words 'telegraph or telephone lines.'"

THE PRESIDENT—The question is on the adoption of the amendment.

MR. OATES—So far as I am concerned I am willing to accept that amendment.

A vote being taken, the amendment was adopted.

MR. SAMFORD (Pike)—I have an amendment: "Amend by making 'one hundred feet' read 'one hundred and fifty feet.'"

THE PRESIDENT PRO TEM—The question is on the adoption of the amendment proposed by the gentleman from Pike.

MR. SAMFORD—I desire simply to state to the Convention that there are cases where in the construction of a railroad on account of the height of an embankment or the depth of a cut, that more than 100 feet is absolutely required for the cut or the fill. I have known that to be the case in several instances. If you put this clause limiting this to 100 feet, a grant of the State land could never be made in excess of 100 feet, an easement on it, and I make it 150 feet because it is sometimes absolutely necessary that a railroad company in constructing its line should have more than 100 feet.

MR. CHAPMAN—Can you limit that 150 feet to the special case in your amendment?

MR. SAMFORD (Pike)—I don't see how you well could, because it says not in excess, and they have got a mere easement in the property and the property that is not used remains the property of the State anyway.

MR. CHAPMAN—Wouldn't the railroads always get 150 feet then?

MR. SAMFORD—Not necessarily so.

MR. CHAPMAN—Not necessarily, but practically wouldn't the railroads always get 150 feet?

MR. SAMFORD—No; as a matter of fact a railroad company does not want more than is actually necessary for the operation of its road, because it requires time and money to keep up the right of way of a road as well as the roadbed, and the law charges them with the duty of keeping up the right of way as well as the roadbed—not in the same condition, perhaps, but it costs something to keep up the right of way. There are instances in my knowledge where serious complications have arisen with regard to obtaining the right of way on account of the fact that they required actually more than 100 feet in order to dig their cut or to build their embankment. I will ask unanimous consent to make it 125 instead of 150 feet.

There being no objection the leave was granted.

MR. O'NEAL (Lauderdale)—You have amended this section by adding the words "telegraph or telephone lines." Would it not be proper to grant a right-of-way to telegraph and telephone lines as well as to railroads?

MR. OATES—It is not necessary when it is allowed already in the next.

MR. O'NEAL—Why not grant it to telephone and telegraph lines, too? My contention is that I did not see any justice in excluding one and not the other.

The amendment was again read.

MR. O'NEAL—I misunderstood the amendment offered by the gentleman from Jefferson.

MR. OATES—That is all right; I have no objection of the section as amended.

MR. SOLLIE—I offer this amendment:

The amendment was read as follows: "To amend the section as amended by inserting in the fifth line after the word 'way' the words 'on payment of just compensation therefor.'"

MR. SOLLIE—I simply offer that amendment on this proposition, that I can see no reason why the State of Alabama should donate to railroad companies or other public enterprises a right-of-way over its lands more than individuals should. I admit the amendment is in the nature of a negative of the original section

rather than an amendment of it. If it is the sense of the Convention that we should give rights-of-way over lines belonging to the State, then I have no objection. I have no serious insistence to make in regard to the amendment. I simply offer it as my idea that we should not give rights-of-way over our lands any more than individuals should.

MR. FOSTER—I want to ask the gentleman if it would be a donation if paid for?

MR. SOLLIE—I think not. And in the hurry of drawing the amendment, without having carefully read the section, I have failed to catch the connection and the thought has occurred to me just as I undertook to send up the amendment that it is in the nature of an objection to the section as drawn rather than in the nature of a proper amendment to it, and after thinking of it, I would ask unanimous consent to withdraw the amendment.

Consent was given to withdraw and the amendment withdrawn.

MR. SOLLIE—Then I have this to say: So far as I am individually concerned, I object to giving railroads rights-of-way. That simply amounts to the proposition that I object to the section.

Upon a vote being taken, the amendment was adopted.

MR. OATES—I see an error next to the last word. It reads, "except subject to said easement" strike out "said" and insert "such."

Upon unanimous consent being given, the alteration as suggested by Mr. Oates was made.

MR. OATES—I move the adoption of the section as amended.

Upon a vote being taken, the section as amended was adopted.

Section 59 was read as follows:

Sec. 59. No obligation or liability of any person, association or corporation held or owned by this State, or by any county, or other municipality thereof, shall ever be remitted, released or postponed or in any way diminished, by the Legislature; nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided, that this section shall not prevent the Legislature from providing by general law for the compromise of doubtful claims.

MR. OATES—I move the adoption of that section.

Upon a vote being taken, the section was adopted.

Sec. 60 was read as follows:

Sec. 60. The Legislature shall provide, by general laws, for the location or removal of county seats by a vote of the people of the county to be affected.

MR. OATES—A similar section was adopted, I think, in the Article on State and County Boundaries, but I presume there will be no difficulty in it if this be adopted, too, and reconciled, and, therefore, I move its adoption.

Upon a vote being taken, the section was adopted.

Section 61 was then read as follows:

Sec. 61. No State or county official shall, at any time, during his term of office, accept, either directly or indirectly, any fee, money, office, appointment, employment, reward or thing of value, or of personal advantage, or the promise thereof, lobby for or against any measure pending before the Legislature, or to give or withhold his influence to secure the passage or defeat of any such measure.

MR. OATES—I move the adoption of the section.

Upon a vote being taken, the section was adopted.

MR. COLEMAN (Greene)—I rise to move the reconsideration of Section 60, which was just adopted.

THE PRESIDENT PRO TEM.—Does the gentleman desire immediate reconsideration?

MR. COLEMAN—If the Convention desires to act on it at once, they can do so, I simply wish to point out an objection.

THE PRESIDENT PRO TEM.—Under the rule, the motion will go over until tomorrow morning.

MR. SAMFORD (Pike)—I move that the rules be suspended.

THE PRESIDENT PRO TEM.—The gentleman from Greene has the floor. Does the gentleman from Greene move the suspension of the rules?

MR. COLEMAN—Yes, sir.

Upon a vote being taken, the rules were suspended.

MR. COLEMAN—Mr. President and delegates of the Convention, it says "the Legislature shall provide, by general laws, for the location or removal of county seats by a vote of the people. That ought to be by a "vote of the qualified voters." "People" embraces more than "voters." It ought to be qualified electors. It ought to read so as to be consistent with what we have adopted

already. This says by a vote of the people," and it ought to be by a "vote of the qualified electors." That is the purpose of my calling attention to it. You can remedy it in a minute if you want it done.

MR. OATES—When it was adopted just now, I called attention to the fact, as I thought, that some provision of the kind had been adopted elsewhere, but as it was not before me I moved the adoption of this. If you have the other and will read it, there will probably be no trouble at all about knocking this out.

MR. COLEMAN—The provision already adopted says "a majority of the qualified electors," this says "by a vote of the people." They are not in harmony with each other, and I don't know that the Committee on Harmony really would be authorized to do any thing but to bring in the two and let you vote over again, and let you select which you will have. We can remedy it at once.

MR. OATES—We might do it, but I am opposed to the change unless I knew what the Convention had already adopted.

MR. PARKER (Cullman)—I can read what the Convention had already adopted: "No county site shall be removed except by a majority vote of the qualified electors of such county voting at an election to be held for such purpose, and when an election has once been held for such purpose, no other election can be held for such purpose until the expiration of four years."

MR. COLEMAN (Greene) — I move that it be considered right now.

Upon a vote being taken the motion to reconsider was carried.

MR. COLEMAN—I move to strike out Section 60.

Upon a vote being taken Section 60 was stricken out.

Section 62 was read as follows:

Sec. 62. The Legislature shall never pass any law to authorize or legalize any marriage of any white person and negro, or the descendant of a negro, to the third generation inclusive, though one ancestor of each generation be a white person.

MR. VAUGHAN—I have an amendment to offer.

The amendment was read as follows:

"To amend Section 62 by striking out all words after the word 'negro' where it occurs the second time in the second line."

MR. VAUGHAN—The amendment is simply to prevent negroes and white people from marrying at all. A negro as defined in the Code, the term negro within the meaning of this Code includes mulatto. The term mulatto, a person of color, within the



meaning of this Code is a person of mixed blood descended on the part of the father or mother from negro ancestry to the third generation inclusive, so one ancestor the third generation be a white person.

MR. COLEMAN—What would be the effect of the amendment?

THE PRESIDENT PRO TEM.—The effect of the amendment is to strike out everything after the word negro where it occurs the second time in the second line of Section 62. The Secretary will read the Section as it would read if amended.

The Secretary read the Section as follows:

"The Legislature shall never pass any law to authorize or legalize any marriage of any white person and a negro, or descendant of a negro."

MR. OATES—The Section as reported by the Committee is the language employed in the penal Code. It is the law of the State and I think that it is proper. The putting of it into the Constitution can have but one operation or effect and that is for all future time to prevent any Legislature from authorizing or legalizing any marriage between the white and negro races or the descendants of the negro to the third generation inclusive, though one ancestor of each generation be a white person. Now, that is the penal statute of the State, and has been for a long time. Why go beyond it in the Constitution? If it is properly in the Constitution and I think it is and it may be of use possibly some time in the future. It is a declaration of the policy against miscegenation and in favor of race separateness, and ought we to go further in this Constitution than our penal laws have ever gone? Or why not go the same length? You see if you leave it as it would be with the amendment adopted, it is an open question then as to how far the descendants might be traced, and how many generations, leaving the thing in a state of uncertainty, as it is an inhibition upon the Legislature from authorizing marriage or legalizing marriage between these races and is in my judgment ample in its provision and as far as we ought to go. It is the law we have lived by for many years.

MR. COLEMAN (Greene)—With the amendment, does not the law provide that there shall never be a legal marriage between a white person and the descendant of a negro? Without the amendment you could legalize a marriage between a white person and the descendant of a negro of the fourth generation.

MR. OATES—Exactly. I am in favor of the statute as it has been ever since it was enacted soon after the ratification of the present Constitution. We have lived by it about a quarter of a century. I haven't known or heard of any marriages in this State

between a white person and a descendant of a negro, and if the principles of the law were enforced I believe it would be better for the community. But this is going far enough. There is no use in going wild upon a proposition. We have the people among us here, an inferior race, and the laws we have had for a quarter of a century and lived under, I think is going far enough in our Constitution, and I therefore move to lay the amendment on the table.

MR. SAMFORD—I call for the ayes and noes.

The call was not sustained.

A vote being taken upon the motion to table the amendment, a division was called for, and by a vote of 11 ayes and 51 noes the motion to table was lost.

Upon a vote being taken as to the adoption of the amendment the amendment was adopted.

MR. LONG (Walker)—I have an amendment to offer.

Amendment by Mr. Long was read as follows: "To amend Section 62 by adding after the word 'negro' in the second line the words "Chinese and Indian.'"

MR. LONG—I don't desire to make a speech on that. I think Indians and Chinese are sorrier than negroes, and I think they ought to be included in there.

MR. JENKINS (Wilcox)—The proudest blood that flows in white veins in Alabama is Indian blood, and if we adopt that amendment we would insult some of the proudest and best people of the State. I move to lay on the table the amendment offered by Mr. Long of Walker.

Upon a vote being taken the amendment was laid on the table.

THE CHAIR—The question recurs on the adoption of Section 62 as amended.

MR. CHAPMAN—I have an amendment to offer.

The amendment by Mr. Chapman was read as follows: "To amend Section 62 by striking out the word 'of' at the end of the first line and in lieu thereof insert the word 'between.'"

MR. CHAPMAN—It reads then instead of "legalizing any marriage of any white person and negro," legalizing any marriage between any white person and negro."

Upon a vote being taken the amendment was adopted.

On further vote the section as amended was adopted.

Section 63 was read as follows:

Sec. 63. The legislature shall provide by law for the regulation and reasonable restraint of trusts, monopolies and combinations of capital so as to prevent them from making, by such artificial means articles of necessity, trade or commerce scarce, or by increasing the cost thereof to the consumer, or by preventing reasonable competition in any calling, trade or business.

MR. OATES—I desire to make a statement. I want to state the reason for the action of the Committee on this is substantially as I stated. At the time the report was submitted I think it but just to myself and the delegate from Mobile (Mr. Brooks) that I make this statement. He had offered an ordinance which appears printed right after the report along with it and that was by the action of the Committee on Legislative Department adopted as a section, but it was tentative, and at a subsequent meeting it was allowed to be reconsidered. We had a rule which did not require any particular form for the reconsideration of any matter but any matter which had been passed upon might be called up at a subsequent stage and reconsidered. That was the case with respect to the ordinance offered by the delegate from Mobile, and which had been adopted. At that meeting it met with considerable opposition. Some other gentleman moved a reconsideration of it and after it was discussed for a time a vote was taken and the Committee was very much divided upon it. I made a statement to the delegate from Mobile that it was not in such form that I could support it, but I was not disposed to vote against this proposition and would vote for it provided I could be allowed to restate it or reduce it, to such language as I thought would be proper to go into the Constitution. That was agreed to and I voted against striking it out. I afterwards, in a hurry, did not draft this section until the evening before the report was made the next morning. While hurrying to get the report in I failed of the opportunity to present it to the delegate from Mobile for him to confirm it before the report was made. The gentleman will see that it is not near so broad as his proposition, and when I came to examine it I could not go further in substance than the one I drafted as a substitute, but I do not wish my action which was not acceptable to the delegate from Mobile, to prejudice him at all, and I hope that the Convention will allow him to offer his proposition as a substitute for this and give him a full and fair hearing upon it.

MR. BROOKS—Mr. President, the accoustic properties of this hall are not what they are in the winter time, when for the most part the windows are closed and the doors are closed, and the atmosphere is not disturbed and whipped into eddies by these electric fans, and I find it very difficult to be heard here, a thing I never found before in my experience in this Legislative Hall. I

find also that on this side of the house it is a very difficult matter to hear gentlemen on the other side whom I have heard repeatedly in halls with great ease. I am suffering this afternoon with hoarseness, and I therefore ask the indulgence of the delegates and ask them to keep quiet so that I may be heard.

I am much obliged to my friend from Montgomery, Governor Oates, the chairman of the committee, for the kind permission that he has given for me to introduce my ordinance, or the ordinance introduced by me as a substitute. I would have that right any way. It, however, puts me to this disadvantage and it puts to disadvantage the friends of the measure that they are supporting an amendment instead of the original proposition which was adopted by the committee. If the Convention will remember I felt called upon when the chairman of the committee made his report to challenge the correctness of this Article 63 as the work of the committee. The gentleman explained then as he does now that he said something about offering a substitute because he said he thought he could improve it. But I could not agree to his offering a substitute as the work of the committee. Nor could I speak for the committee on that subject. A vote was taken after considerable discussion, as the chairman of the committee has very well said, and the result was a vote of nine to six in favor of what I have been graciously permitted to have as a part of this report a printed copy of what was actually the work of the committee.

Now, sir, I am reminded of a story of ancient history, because I cannot very well help looking at the humorous phase of it somewhat. In olden times the Grecian philosophers worried themselves a great deal to formulate a scientific definition of man. After a great deal of trouble old Plato finally formulated a definition of man, which seemed to satisfy him. He defined man to be a biped without feathers. A few days afterward old Diogenes appeared among the school of philosophers with an old rooster in his arms with all the feathers plucked out and he threw it on the floor and said "behold Plato's man," and that was the finishing of the definition Plato had given. And so the chairman of the committee comes in here with a substitute without head or tail or feathers and says "behold my improvement on the ordinance, adopted by the committee; it is so much briefer," and so, Mr. President, it is so much briefer, and the great objection that I have to the substitute the gentleman brings in as the report of the committee is that it is colorless and inconsequential. It is very difficult to tell from the construction of it exactly what it means, but there is no doubt about it that the effect is simply to perpetuate trusts in this State.

Now the ordinance which I had the honor to submit to this Convention, and which was adopted even without the vote of the chairman of the committee, by a vote of eight to seven, is taken from an Ohio statute and is one of the best pieces of definition

which I have read. The very object I had was to define in the Constitution what was meant by a trust.

MR. WALKER (Madison)—I will ask you if a definition of that kind has operated to stop trusts in Ohio?

MR. BROOKS—I will come to that in a moment. That law has been passed upon by the Supreme Court of Ohio. I read it some time ago rather cursorily, I haven't got it now. It did not go to the whole extent but it did decide that it was constitutional and that there were no obiter dicta against its constitutionality in any respect. It was reported in the papers not long ago where a case arose under that very statute and one plaintiff in the case, a woman, got all the damages and satisfaction she wanted. It had the effect of driving out from the State of Ohio the Standard Oil Company, having that as its place of business, and it is asserted, and I have heard it from a gentleman who got it from Mr. Monnette, the Attorney General himself, that that corporation offered him \$300,000 to stop his prosecution.

I have been very much amused at the criticisms that have been passed on this ordinance. Why, I heard that a banker said that you could not have any bank clearances—that you could not have such a thing as a clearing house. It has no more to do with a bank clearing house than with the diurnal revolution of the earth. It would have no more power to affect bank clearances than it would have to "bind the sweet influences of the pleides, or loose the bands of Orion." One gentleman said it would break up labor organizations. It has nothing in the world to do with labor organizations.

The whole essence of the thing is directed to affecting prices of articles or commodity of trade or manufacture or production. A man's skill or a man's labor comes under neither head.

MR. WEATHERLY—I do not know whether I ought to rise to a point of order or not. The gentleman is addressing himself apparently to the ordinance which he introduced and which is not a part of the report. He has not offered it as a substitute. I would like to know the parliamentary status of this ordinance.

THE PRESIDENT—The pending question is on Section 63, as reported by the committee, and the chair understood the gentleman from Mobile to be addressing himself to that question.

MR. WEATHERLY—I understood he was addressing himself to something else.

THE CHAIR—That is the pending question. If the gentleman rises to a point of order that the gentleman is not confining himself to a reasonable limit of the debate, the chair will undertake to see that he does.

MR. BROOKS—I like a fair fight, Mr. President, and I don't think I am over-stepping freedom of the debate. I confine myself to the questions involved both in the substitute quoted by the chairman of the committee and the ordinance adopted by the committee; both are on the same line. Then another gentleman made this objection. He said, "Suppose the lawyers in a given place were to enter into an agreement that they would charge so much?" I said, "I understand you—you mean a fee bill?" "Yes." Well, I said that it would not affect them at all. In the first place, there are not a dozen lawyers who will get together and formulate a fee bill they will stick up to, and, further, it does not affect the outside lawyers not in the combine, and, therefore, it will not destroy competition. Another objection is, that it will injure capital; that capital is timid. Well, Mr. President, I deny that capital is timid. That is one of these fallacies that have gained circulation, and almost belief, through time, and it ought to be among those popular fallacies that are treated of by Charles Lamb is one of his essays. They are popular fallacies and that is a popular fallacy. Capital is not timid. It is cautious, but it is alert; it is remorseless, and it is untiring when it has the power. No man has any less desire to restrict capital, or to affect it injuriously in any way than myself. All of my lifetime and my manhood has been engaged in efforts to bring capital to this State, in efforts to encourage everything that capital entered into, and no man would do more and go farther than I would to encourage it in legitimate enterprises and give to it all the protection it needs, but those are some of the arguments that are brought against the idea of incorporating a trust provision in this Constitution. Another gentleman says: "You cannot stop it. Three or four men might get together in a room at night and fix up a combination of which you will know nothing, and you cannot stop it." Mr. President, that is the gospel of despair, and those who preach the gospel of greed are men who use the gospel of despair most. They are trying to lull the people to apathy, and it is apathy that results from commercial greed and supremacy that has run riot over the land in the last few years that we are to fear the most. Now, sir, I do not desire to go into any elaborate discussion of this thing. I can show you that if the platform of political parties is worth anything as the expression of public opinion, I can show you, by reading you short extracts from the platform of every party that took part in the last Presidential election, that the trust idea was condemned, and everyone of them promised that they would do what they could to stop it. Why, one gentleman I heard say he doubted very much whether there was such a thing as trusts, and that is what Mark Hanna said for a long time, until he finally said they were a good thing. The Democratic party, the Republican party, the Silver-Republican party and the Middle-of-the-Road Populists everyone had a clause in its platform against trusts, and only the other party, the Democratic plat-

form in Ohio contained an anti-trust platform. Attention has been called to that platform. The action of the Democratic Party has attracted a good deal of attention. They not only declared against free passes, but also against trusts. Now, I am going to offer, Mr. President, not the ordinance which I brought before the Committee, and which the Committee adopted, but I am going to offer a shorted ordinance, which I would like to read as part of my remarks. I have drawn an ordinance, at least an amendment on the line of that ordinance, which is more than half as short.

The substitute was read as follows:

It shall be the duty of the General Assembly by appropriate legislation, to prohibit combinations by two or more persons, corporations or associations to enter into or carry out any contract or agreement by which they shall bind or have bound themselves to fix the prices of any article, commodity or transportation between them, or between themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves or the purchaser or consumer of any commodity in this State, or transportation of any such article or commodity, by which they shall agree to pool or combine directly or indirectly any interest they may have connected with the sale or transportation of any such article or commodity that its price might in any manner be effected. Every such combination is a trust within the meaning of the Constitution and is hereby declared to be in derogation of the rights of the people, unlawful, against public policy, and void and of no effect.

Now, Mr. President, I do not care about going into the hair-splitting interpretations, or substitutes of construction, but I wish to say that the object and purpose of that amendment is simply to provide against any combination that will affect the prices of any articles or commodity of commerce or production or manufacture, etc. That is the sole purpose, and now I offer this as a substitute for Section 63 reported by the Chairman of the Committee.

MR. EYSTER—I have a substitute for that.

The Secretary read the substitute as follows:

“Amend line two of Section 63 by adding after the word “capital” and before the word “so” the words “or labor.”

MR. MACDONALD (Montgomery)—Mr. President, I was a member of the Committee on Legislative Department, and the occurrences in that Committee as stated by Mr. Brooks are absolutely correct. The ordinance which the Chairman of the Committee now kindly consents he shall offer as a substitute was adopted by a vote of 9 to 6 in that committee, and the distinguished Chairman voted for it. He stated after his vote that it was rath-

er broad and that he might have a substitute for it, but never suggested, as I understood it, to the committee or to Mr. Brooks that he should introduce this substitute himself in the Committee and adopt it himself.

So my friend from Mobile has been put in a very unfortunate position. He was entitled, before this Convention, to have his substitute, his ordinance, come in as the ordinance approved of and favorably reported by the committee, but he is now put in a position where it seems he will either have to amend the section by an independent amendment or introduce an ordinance which was the work of a majority of the committee, to this Convention, handicapped, apparently by an adverse vote, and I am not surprised that Mr. Brooks should have been somewhat taken aback when this Convention heard the majority report read, and I think his condition was somewhat similar to the old darkey who, the story says, caught a large channel cat, and, satisfied with the result of his fishing, went to sleep, and while slumbering, two or three small negro boys came along and substituted for that channel cat a little mud cat, and when he woke and went after the fish to carry it home and found that it was so small, he says, "O Lord, how this fish have shrunk," and it did shrink. Well, examine the ordinance introduced by the gentleman from Mobile and then the one reported by the committee—let them examine the innocuous, meaningless statement of the committee. I won't read the ordinance of Mr. Brooks as I suppose the gentlemen on the floor have read it. Now, Mr. President and gentlemen of the Convention, that is brutum fulmen of the first variety. What does it mean? Simply advice by the Convention to the Legislature to try and see if they cannot keep pace with the ingenuity of trusts, and we all know that it requires considerably more learning and experience and ability than one legislator or a hundred legislators have, to do it. It is wise and democratic, and in pursuance of what was always understood to be democratic principles, for every Democratic party, whenever it assembles, it endeavors to restrict, as far as possible, these unlawful combinations, and my friend from Mobile has done so, and perhaps has gone too far for the present day, but he has gone no further than a Democrat should go who is prepared to follow to its legitimate results the policies of his party. And I—and I suppose every other Democrat—am willing to do it. No man should adopt any principle, no man should elect to pursue any course, unless he is willing to go to the every farthest extreme, to the end of the row. My friend, Mr. Brooks, has said the expression was indulged in, and it was not to my surprise, in the committee that it was said and the argument used that there were no trusts, and there, before that committee, and here before this Convention, I express my surprise that any member of the Democracy should take it as the next of his remarks, a statement made by Mr.



Mark Hanna, and which, when made, excited comment from the Lakes to the Rio Grande. There are no trusts! What has the Democracy been fighting all this time? Is it a mere shadow? What have been the results? Let every man that has got a grocery bill to pay answer it, and we will see, from year to year, the necessities of life increased in price, although we are always met by the statement that trusts are beneficial and that the cost of the necessities and luxuries of life are reduced by them. It occurs to me whenever a proposition is submitted to Democratic party, they will carefully consider it and act as far as possible in restricting these unlawful combinations—not saying generally that unlawful combinations shall be restricted — everybody knows that — but pointing out as far as possible by specific statements what trusts are unlawful, so that all contracts and actions they take in regard to consummating their nefarious designs are promptly met with by being stamped with illegality by the courts of the country. That is what Mr. Brooks asks for from this Convention, and that is what I ask for, and that is all any Democrat contended to follow—one of the main principles of his party—should ask for.

MR. LONG (Walker)—I think that this is a mere legislative duty. It puts a new section into the Constitution, and I doubt the wisdom of it. I move to lay the original section and the pending amendment upon the table.

MR. BROOKS—On that I call for the ayes and noes.

MR. deGRAFFENREID—I ask for a division of the question.

THE PRESIDENT PRO TEM.—In the opinion of the chair, the question can be divided. The question recurs on the motion to lay the amendment offered by the gentleman from Morgan on the table.

Upon the call of the roll, the vote resulted as follows:

#### AYES

Almon,	Coleman, of Greene,	Heflin, of Chambers,
Ashcraft,	Craig,	Heflin, of Randolph,
Banks,	Davis, of DeKalb,	Hodges,
Barefield,	Davis, of Etowah,	Hood,
Beddow,	Dent,	Howell,
Bethune,	deGraffenreid,	Howze,
Blackwell,	Duke,	Inge,
Bulger,	Eley,	Jones, of Wilcox,
Brooks,	Espy,	Knight,
Burns,	Glover,	Kyle,
Carmichael, of Colbert,	Graham, of Montgomery,	Leigh,
Cobb,	Handley,	Locklin,
Cofer,	Harrison,	Long, of Walker,

Lowe, of Jefferson,	Opp,	Sollie,
Macdonald,	Palmer,	Spears,
McMillan (Baldwin),	Parker, of Cullman,	Spragins,
McMillan, of Wilcox,	Pettus,	Stewart,
Malone,	Pitts,	Taylor,
Martin,	Reynolds, of Chilton,	Vaughan,
Maxwell,	Rogers, of Lowndes,	Waddell,
Merrill,	Rogers, of Sumter,	Walker,
Moody,	Samford,	Watts,
Mulkey,	Sanders,	Weatherly,
Murphree,	Sloan,	White,
Norwood,	Smith, of Mobile,	Williams, of Barbour,
Oates,	Smith, Mac A.,	Williams, of Marengo,
O'Neal, of Lauderdale,	Smith, Morgan M.,	Wilson, of Washington,
		TOTAL—81

## NOES

Foshee,	Jenkins,	
		TOTAL—2

## ABSENT OR NOT VOTING

Messrs. President,	Grant,	O'Rear,
Altman,	Grayson,	Parker, of Elmore,
Bartlett,	Greer, of Calhoun,	Pearce,
Beavers,	Greer, of Perry,	Phillips,
Boone,	Haley,	Pillans,
Browne,	Henderson,	Porter,
Burnett,	Hinson,	Proctor,
Byars,	Jackson,	Reese,
Cardon,	Jones, of Bibb,	Renfro,
Carmichael, of Coffee,	Jones, of Hale,	Reynolds (Henry),
Carnathon,	Jones, of Montgomery,	Robinson,
Case,	King,	Sanford,
Chapman,	Kirk,	Searcy,
Coleman, of Walker,	Kirkland,	Selheimer,
Cornwall,	Ledbetter,	Sentell,
Cunningham,	Lomax,	Sorrell,
Eyster,	Long, of Butler,	Studdard,
Ferguson,	Lowe, of Lawrence,	Thompson,
Fitts,	Miller, of Marengo,	Weakley,
Fletcher,	Miller, of Wilcox,	Whiteside,
Foster,	Morrisette,	Willet,
Freeman,	NeSmith,	Williams, of Elmore,
Gilmore,	Norman,	Wilson, of Clarke,
Graham, of Talladega,	O'Neill (Jefferson),	Winn,

And by a vote of 81 ayes to 2 noes the motion to table was carried.

The question recurred upon the substitute offered by the gentleman from Mobile (Mr. Brooks).

Upon a call of the roll, the vote resulted as follows:

AYES

Altman,	Hood,	Palmer,
Almon,	Howze,	Parker (Cullman),
Ashcraft,	Inge,	Pitts,
Barefield,	Jenkins,	Rogers (Sumter),
Blackwell,	Jones, of Montgomery,	Samford,
Bulger,	Jones, of Wilcox,	Sanders,
Carmichael, of Colbert,	Knight,	Smith (Mobile),
Chapman,	Long (Walker),	Taylor,
Coleman, of Greene,	Lowe (Jefferson),	Vaughan,
Dent,	Martin,	Waddell,
deGraffenreid,	Maxwell,	Walker,
Duke,	Mulkey,	Watts,
Eley,	Murphree,	Weatherly,
Eyster,	Norman,	Williams (Barbour),
Foshee,	Oates,	Williams (Marengo),
Graham, of Montgomery,	O'Neal (Lauderdale),	Wilson (Clarke),
Harrison,	Opp,	Wilson (Washington),
		TOTAL—51

NOES

Banks,	Heflin, of Chambers,	Pettus,
Beddow,	Heflin, of Randolph,	Reynolds (Chilton),
Bethune,	Howell,	Rogers (Lowndes),
Brooks,	Kyle,	Sloan,
Burns,	Leigh,	Smith, Mac A.,
Cobb,	Locklin,	Smith, Morgan M.,
Cofer,	Macdonald,	Sollie,
Craig,	McMillan (Baldwin),	Spears,
Davis, of DeKalb,	McMillan (Wilcox),	Spragins,
Davis, of Etowah,	Malone,	Stewart,
Espy,	Merrill,	White,
Glover,	Moody,	
Handley,	Norwood,	
		TOTAL—37

ABSENT OR NOT VOTING

Messrs. President,	Cardon,	Ferguson,
Bartlett,	Carmichael, of Coffee,	Fitts,
Beavers,	Carnathan,	Fletcher,
Boone,	Case,	Foster,
Browne,	Coleman, of Walker,	Freeman,
Burnett,	Cornwall,	Gilmore,
Byars,	Cunningham,	Graham, of Talladega,

Grant,	Long (Butler),	Reynolds (Henry),
Grayson,	Lowe (Lawrence),	Robinson,
Greer, of Calhoun,	Miller (Marengo),	Sanford,
Greer, of Perry,	Miller (Wilcox),	Searcy,
Haley,	Morrisette,	Selheimer,
Henderson,	NeSmith,	Sentell,
Hinson,	O'Neill (Jefferson),	Sorrell,
Hodges,	O'Rear,	Studdard,
Jackson,	Parker (Elmore),	Thompson,
Jones, of Bibb,	Pearce,	Weakley,
Jones, of Hale,	Phillips,	Whiteside,
King,	Pillans,	Willet,
Kirk,	Porter,	Williams (Elmore),
Kirkland,	Proctor,	Winn,
Ledbetter,	Reese,	
Lomax,	Renfro,	

So the motion to table was carried.

MR. COLEMAN (Greene)—I desire to offer an amendment to Section 63.

THE PRESIDENT PRO TEM.—The gentleman is out of order. The question is upon the adoption of the section. The ayes and noes have been called for, and the call has been sustained.

Upon a call of the roll the vote resulted as follows:

#### AYES

Brooks,	Long (Walker),	Norman,
Foshee,	Mulkey,	Walker,
Hood,		

TOTAL—7

#### NOES

Ashcraft,	Davis, of Etowah,	Inge,
Almon,	Dent,	Jenkins,
Banks,	deGraffenreid,	Jones, of Montgomery,
Barefield,	Duke,	Jones, of Wilcox,
Beddow,	Eley,	Knight,
Bethune,	Eyster,	Kyle,
Blackwell,	Espy,	Leigh,
Bulger,	Glover,	Lowe (Jefferson),
Carmichael, of Colbert,	Graham, of Montgomery,	Macdonald,
Chapman,	Handley,	McMillan (Baldwin),
Cobb,	Harrison,	McMillan (Wilcox),
Cofer,	Heflin, of Chambers,	Malone,
Coleman, of Greene,	Heflin, of Randolph,	Martin,
Craig,	Howell,	Maxwell,
Davis, of DeKalb,	Howze,	Merrill,

Moody,	Rogers (Lowndes),	Stewart,
Murphree,	Rogers (Sumter),	Tayloe,
Norwood,	Samford,	Vaughan,
Oates,	Sanders,	Waddell,
O'Neal (Lauderdale),	Sloan,	Watts,
Opp,	Smith (Mobile),	Weatherly,
Palmer,	Smith, Mac. A.,	White,
Parker (Cullman),	Smith, Morgan M.,	Williams (Barbour),
Pettus,	Sollie,	Williams (Marengo),
Pitts,	Spears,	Wilson (Clarke),
Reynolds (Chilton),	Spragins,	Wilson (Washington),

TOTAL—79

# ABSENT OR NOT VOTING

Messrs. President,	Grayson,	Parker (Elmore),
Altman,	Greer, of Calhoun,	Pearce,
Bartlett,	Greer, of Perry,	Phillips,
Beavers,	Haley,	Pillans,
Boone,	Henderson,	Porter,
Browne,	Hinson,	Proctor,
Burnett,	Hodges,	Reese,
Burns,	Jackson,	Renfro,
Byars,	Jones, of Bibb,	Reynolds (Henry),
Cardon,	Jones, of Hale,	Robinson,
Carmichael, of Coffee,	King,	Sanford,
Carnathon,	Kirk,	Searcy,
Case,	Kirkland,	Selheimer,
Coleman, of Walker,	Ledbetter,	Sentell,
Cornwall,	Locklin,	Sorrell,
Cunningham,	Lomax,	Studdard,
Ferguson,	Long (Butler),	Thompson,
Fitts,	Lowe (Lawrence),	Weakley,
Fletcher,	Miller (Marengo),	Whiteside,
Foster,	Miller (Wilcox),	Willet,
Freeman,	Morrisette,	Williams (Elmore),
Gilmore,	NeSmith,	Winn.
Graham, of Talladega,	O'Neill (Jefferson),	
Grant,	O'Rear,	

MR. COLEMAN (Greene)—If it is in order, I move that the Convention remain in session until we dispose of this argument.

Upon a vote being taken the rules were suspended, and upon a further vote the motion was carried.

MR. COLEMAN (Greene)—I have an amendment which I desire to offer to Section 63. The amendment was read as follows:

Move to amend Section 63 so that it shall read as follows:

"The legislature shall provide by law for the regulation and reasonable restraint of common carriers, partnerships and associations, trusts, monopolies and combinations of capital, so as to prevent them or either of them from making the articles of necessity, trade or commerce scarce, or from increasing unreasonably the cost thereof to the consumer or preventing reasonable competition in any calling, trade or business.

MR. BROOKS—I rise to a point of order. The previous question was called, upon the amendment, substitute and section.

THE PRESIDENT PRO TEM—The Chair's recollection is that the motion was to table the section and amendment, and the Convention has refused to table the section, and the amendment is therefore in order.

MR. COLEMAN (Greene)—That amendment defines by setting out by names those subjects that should be interfered with by legislation. So far as I am concerned I think all these matters belong to the legislature, but if the Convention is determined to adopt any provisions looking to the end sought to be obtained by Section 63, then I offer that as a substitute, or as an amendment to take the place of it. The difference between the original Section 63 and the amendment is that in the second line, after the words "of common carriers, partnerships and associations" are inserted, then it includes "trusts, monopolies and combinations of capital," so as to prevent them from making, in the original section it says by artificial means, and I do not know exactly what that is, but it reads so as to prevent them or either of them from making the articles of necessity, trade or commerce scarce, or prevent them from unreasonably increasing the cost thereof to the consumer, or to prevent reasonable competition in any trade or calling. I used the word unreasonable, because articles of the character included here could not be transported without some cost, that is the purpose of using the word unreasonable. I think it meets the purpose intended by the gentleman of Mobile, and has none of these combinations and confusions. It is easily understood, if the Convention sees proper to adopt any amendment upon that line.

MR. LOWE (Jefferson)—I have an amendment.

The amendment was read as follows:

Amend Section 63 of Article IV by inserting before the word "regulation" the words "prohibition or" and striking out the word "and" immediately after the word "regulation" in first line.

MR. LOWE (Jefferson)—If the members will consider the language that is employed in this provision as follows: "The legislature shall provide by law for the regulation and reasonable restraint of trusts, monopolies and combinations of capital so as to prevent them, etc. That provision would seem to take away from

the General Assembly the power to prohibit the combination of capital for the purposes stated. I do not believe that that was the purpose of the Committee. I do not believe it was the intention of the Committee to take away from the legislature of Alabama the power to prohibit trusts and combinations of capital, and therefore I move the adoption of the amendment which has been sent to the desk.

MR. BROOKS—I ask to have the section as amended by that substitute read so we may understand it.

The Secretary read as follows:

“The legislature shall provide by law for the prohibition or regulation or reasonable restraint of trusts, monopolies and combinations of capital, so as to prevent them from making by such artificial means, articles of trade, or commerce scarce or by increasing the costs thereof to the consumer, or by preventing reasonable competition in any calling, trade or business.

Upon a vote being taken a division was called for.

MR. LOWE (Jefferson)—If it is not too late I will call for the ayes and noes.

The call was not sustained.

MR. HOWZE—What is the effect of the amendment offered by the gentleman from Jefferson upon the substitute offered by the gentleman from Greene?

MR. COLEMAN (Greene)—I will state that the gentleman from Greene is perfectly willing to accept that so far as he is concerned.

MR. WATTS—I withdraw my call for a division.

The amendment offered by the gentleman from Jefferson by a viva voce vote was adopted

THE PRESIDENT—The question recurs upon the amendment offered by the gentleman from Greene.

MR. SOLLIE—Before voting on the amendment I am not sure that I understand what the effect of the adoption of the amendment offered by the gentleman from Jefferson will be. I don't know whether the word “prohibit” was substituted for the word “regulation” or merely added to the Section.

A DELEGATE—It was added to it.

A reading of the Section as amended was again called for, and upon a vote being taken the amendment offered by the gentleman from Greene as amended by the amendment of the gentleman from

Jefferson was adopted, thereupon Section 63 as amended was adopted

Section 64 was read as follows:

Sec. 64. The Senators and Representatives shall, before entering on their official duties, take the following oath, to wit: "I, \_\_\_\_\_, do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and of the State of Alabama, and particularly observe and obey all the provisions of the latter relating to the Legislative Department, to the best of my ability, so help me God."

MR. BLACKWELL—I desire to offer an amendment.

The amendment was read as follows:

Amend Section 64, report of the Committee on Legislative Department, by striking out all after the word "Alabama" in the fourth line

MR. BLACKWELL—That is merely for the purpose of striking out what seems to me to be a ridiculous statement. It reads as if we should observe one part of the oath more than the other, and it is simply to remove that apparent distinction which we appear to make in the observance of this oath.

MR. COLEMAN (Greene)—I think I have an amendment which will meet your views, and some other defects.

The amendment was read as follows:

Amend Section 64 of the Legislative Department by inserting after the word "and" in the third line the words "the Constitution," and to further amend said Section by striking out all of the fourth line after the word "Alabama," and strike out the words "Legislative Department" in the fifth line.

MR. COLEMAN (Greene)—The Section would read, if the substitute was adopted: "Solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and of the State of Alabama to the best of my ability, so help me God."

Upon a vote being taken the substitute was adopted, and upon a further vote, the amendment offered by the gentleman from Morgan as amended by the substitute of the gentleman from Greene was adopted

Thereupon Section 64 as amended was adopted.

Mr. Burns sought recognition.

MR. WADDELL—I move that this Convention do now adjourn.



THE PRESIDENT PRO TEM—The Chair had recognized the gentleman from Dallas to offer an amendment to the Article.

MR. WEATHERLY—I rise to a point of order. The hour of adjournment has arrived. The rules were suspended, and we determined to remain in session until this article was disposed of.

THE PRESIDENT PRO TEM—Until this article was completed, and the Chair would be disposed to hold that the Article is not complete while an amendment to it is in order, and an amendment is in order at this time.

MR. BURNS—Read the amendment, and if there is any objection to it I will withdraw it.

The amendment was read as follows:

Strike out all of Section 64 and insert:

That the President of the Senate and Speaker of the House shall receive \$6 per diem and 10 cents mileage.

MR. BURNS—You will recollect that no salary has been fixed for the President of the Senate or the Speaker of the House. They ought to have more than four dollars per diem.

MR. ASHCRAFT—I move that the amendment be laid upon the table.

Upon a vote being taken the amendment was laid upon the table.

MR. BROOKS—I move we adjourn.

MR. SMITH—I have an amendment I desire to offer to the article.

Amend the article reported by the Committee on Legislation by adding thereto the following, as a separate section:

If at any time it should become impossible or dangerous for the Legislature to meet or remain at the Capitol, or for the Senate to meet or remain in the Senate Chamber, or for the Representatives to meet or remain in the Hall of the Representatives, the Governor may convene the Legislature or remove it after it has convened, to some other place, or may designate some other place for the sitting of the respective houses or either of them, as necessity may require.

MR. OATES—That is already provided for in the article.

MR. HEFLIN (Chambers)—I understood the gentleman from Mobile was willing to withdraw the amendment if there was a section in the article which covered the point.

MR. SMITH (Mobile)—I don't know where the gentleman got his understanding from. The gentleman from Mobile has not said a word about it.

MR. HEFLIN—I rise to a question of personal privilege.

THE PRESIDENT PRO TEM.—The gentleman from Mobile has the floor.

MR. SMITH (Mobile)—When we adopted Section 5, I tried to get in the amendment, and also when Section 15 was under consideration. This Convention has made the following provision, in Section 5, that the Convention shall meet quadrennially at the Capitol in the Senate Chamber and in Hall of the House of Representatives except in the case of the destruction of the Capitol or epidemics. Now it may be that this portion of the Capitol might become dangerous, so that it cannot be occupied, and yet it is not destroyed, or it may occur as it did in Kentucky that by riot or an armed force it would be impossible to sit at the Capitol, without there being an epidemic at all and there is no power in that section to permit the Legislature to sit elsewhere. The Chairman suggests that I read the balance of the section, "when the Governor may convene them at such place in the State as he may deem best on the day specified in this Constitution, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under this Constitution, nor longer than fifty days at any subsequent session."

Then in Section 15 the Convention will find this provision:

"Neither house shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting. If anything should occur between the adjournment and the time that they returned the Legislature would be broken up."

It seems to me therefore there ought to be a provision permitting them to sit elsewhere whenever it becomes impossible for them to sit in the Capitol, or is dangerous for them to do so, irrespective of what causes that impossibility, or what the causes of the danger may be. I add this as an additional section, in order that the Committee on Harmony may make the correction in the proper section.

MR. BURNS—I offer an amendment to the amendment.

"Amend Section 64: The President of the Senate and Speaker of the House shall receive six dollars per diem."

MR. ROGERS (Sumter)—That has just been voted down.

MR. BURNS—I have the floor, and I will ask the distinguished Chairman if there is any provision for paying the Speaker of the

House and the President of the Senate any more than an ordinary member.

MR. OATES—Not in the Constitution, but the Legislature does that for their official services. In addition to their being members of the house and getting the regular pay as members, there is an additional allowance for their official work, and I think it best to leave it as it is.

MR. BURNS—The Legislature might make it twenty-five dollars or two dollars and a half. I insist on the amendment, and they may vote it down.

MR. ASHCRAFT—I rise to the point of order that the same amendment has been voted on before and has been tabled, and this amendment is not germane to the amendment offered by the gentleman from Mobile.

THE PRESIDENT PRO TEM.—The point of order is sustained. The amendment is out of order.

MR. BURNS—I rise to a point of order. The other article I sent up there, or instrument, was an independent section, and not an amendment, and this is not verbatim.

THE PRESIDENT PRO TEM.—The Chair has ruled on the point of order.

MR. OATES—The amendment offered by the delegate from Mobile, as a separate section, I think, might be well taken in connection with Section 5, which has already been passed upon, and I presume the Committee of Harmonics can do that. It ought not to be scattered about, but ought to be a part of Section 5, if adopted at all. I shall interpose no objection to it, if the Convention desires to adopt it.

MR. HEFLIN (Chambers)—I move its adoption, Mr. President.

Upon a vote being taken the amendment offered by the gentleman from Mobile (Mr. Smith) was adopted.

MR. SMITH (Mobile)—I desire to move to reconsider the vote whereby Section 59 was adopted. I endeavored to offer an amendment to the section at the time as was under consideration, but did not catch the eye of the Chair.

THE PRESIDENT PRO TEM.—Under the rule of the Convention the motion will go over until tomorrow.

MR. BEDDOW—I have an amendment.

MR. BURNS—That motion to reconsider will have to go over until tomorrow morning.

THE PRESIDENT PRO TEM—The Chair has just made that announcement.

The amendment offered by Mr. Beddow was read as follows:

Section 66. All printing and stationery furnished under Section 28 of this article shall bear the union label of the Typographical Union, provided the printing establishment having in their employment union labor is the lowest responsible bidder, at the lowest prices.

MR. BEDDOW—If the Convention desires to adjourn, I will address myself to that amendment in the morning.

MR. HEFLIN (Chambers)—I move that we adjourn.

THE PRESIDENT PRO TEM—The gentleman from Jefferson has the floor.

MR. BEDDOW—That amendment is one that I have been making an effort to get before this Convention in some shape or other for the last twenty days. I offered a resolution on that subject, that was assigned to a certain hole, from which it can never recover, if left to stand as it is. I did this at the request of numerous citizens and voters of the State of Alabama, those whose interests we were sent here to look after, and who are looking to this Convention for some aid and some support along the lines of union labor. We have had numerous petitions from the Typographical Unions of Huntsville, of Birmingham, of Mobile and of Montgomery, from the United Iron Workers of America, the leading Trade Councils all over the State, and in the aggregate I do not think it is an exaggeration to say that this request comes from twenty-five to thirty thousand white voters in the State of Alabama. Matters like this cannot be turned lightly down, and I must say that I have been surprised that on every occasion that I have attempted to get this question before this house, a manner little short of ridicule has met my effort, but I am glad to say that I have got it before the house at last, and if there are thirty men in this house who favor this class of our citizens, I want to call for an aye and no vote, to show how we stand upon this proposition. In every department of this life where success is attained, there must be a union of action. The great capitalists all over the country, when they seek to decrease their expenses and increase their field of operation, unite their capital and their intellect. All things are unsuccessful, unless they have a head under whom they can work together as one man. In other words in union there is strength, and in division there is weakness.

The leading newspapers of this State, with but one exception, I believe, carry at their mastheads the union label of the Typographical Union, The Age-Herald at Birmingham, Birmingham News, Birmingham Ledger, The Mobile Register and The Mont-

gomery Journal, all carry at their mastheads this union label, and they are the leading newspapers of the State of Alabama. The object of the organization is not for the purposes that some people charge to them. They are not a set of Nihilists, they are not a set of Anarchists. They are men that are bound together for upbuilding the rights of labor in this country, not by illegal means, but just along the same lines that bind other organizations together for the good of all. You can look over the whole field, and among these men are not those who fill the poor houses and the jails of your country. They are the men who do the best work along the lines of business that they are engaged in. In my county it has worked wonders. Ten years ago in Jefferson County the man dared not let it be known that he belonged to a union organization; today a man is proud to say that he is a member of such an organization. They meet with their employers, and they consult with them, and they demand and command their respect. The result is that it has been proven to be for the benefit of the employer and employe. It has brought them into closer relation with each other. It has decreased the number of strikes, and has benefited thousands of members in my county, and I have seen the good results of its work.

Now we have tried this printing business outside of the State, and in every instance it has been a failure. The poorest book that I have in my library is 118 Alabama, which was sent out of the State to be printed. It will be better to pay these men who are good workmen, better prices, and keep it within our State, and give the advantage to those who are banded together for the benefit of themselves and benefit of their families, than to go beyond the confines of the State and give it to other people. Now some people might say it would be wrong to discriminate, that there are others that do not belong to unions. I can say of my personal knowledge that these men do not desire to break down the organization, but they work on the outside for they know there are those who will not give employment to men who belong to a labor organization. You pass this law, and those same parties will be glad to employ the same class of men, and those men who are non-union men will be glad to join the ranks of union labor, and join in the effort for the upbuilding of the common good. At the opening of this session our President quoted a very beautiful piece of poetry about Abou Ben Adhem. He went on to speak of the angel writing in the book. And Abou waked and asked what he was doing, and he said he was writing the names of those who loved the Lord, and Abou asked if his name was written there, and the angel answered that it was not. Abou said write me as one who loves his fellow-man. The angel wrote and vanished, and when he returned and read the names whom love of God had blessed, the poet says Lo, Be Adhem's name lead all the rest. Now let us not only adopt such grand lofty and ennobling sentiment for the embellishment

of our speeches, but let us show by our actions that we are in deed and in truth men who love our fellow-men.

MR. OATES—The provision already adopted, and which has been in force for more than twenty-five years, requires the printing to be let to the lowest responsible bidder, requiring that it should bear the stamp of a labor organization or a printers' union has no place in a Constitution. If any establishment in which labor union is employed should be the lowest responsible bidder for the work they ought to have it, and there is nothing in the provision already to exclude them from it or discriminate against them. It is committed to the officers of the State to let out the printing to the lowest responsible bidder, without discrimination, sometimes it may be that the officer or officers whose duty it is may let out the printing, as has been alleged, to irresponsible parties outside of the State, but in that they do not discharge the trust committed to them properly. We cannot assume that it will be uniformly thus. If it should be the lowest responsible who will do the work well. I do not think that the amendment offered by the gentleman from Jefferson has any proper place at this time. I will say that I have, and no doubt the Convention has, as much respect for the honest labor of those in the union as those who are not. That is not the question. The printing of the State must be let out to the lowest responsible bidder, and it does not include any one who does not belong to a labor union or a printer's union, and therefore I move to lay the amendment upon the table.

MR. BEDDOW—On that I call for the ayes and noes.

The call was not sustained, and upon a viva voce vote the motion to table was carried.

THE PRESIDENT PRO TEM—Under the suspension of the rules the Convention must remain in session until this Article is completed. The Article now having been completed, the Convention will stand adjourned until 9:30 o'clock tomorrow morning.

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### CORRECTIONS

In proceedings of the forty-ninth day, first column, second page, Mr. Foster is recorded as voting no on adoption of Article on Local Legislation. Mr. Foster was absent on that day, and consequently did not vote.

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In proceedings of the fiftieth day Mr. Brook's amendment should read as follows:

No railroad or other transportation company shall grant free passes, or shall at reduced rates not common to the public, sell

tickets for transportation to any person holding any office of honor, trust or profit in this State, and the acceptance of such pass or ticket by a member of the Legislature or any public officer shall work a forfeiture of his office, at the suit of the Attorney General.

Any railroad or other transportation company or officer or agent thereof who shall grant a free pass, or shall at reduced rates not common to the public, sell tickets for transportation to any such person, shall be deemed guilty of a misdemeanor and is liable to punishment, except as herein provided.

No person or officer or agent of a corporation who gives any such free pass, free transportation or sells tickets for transportation at reduced rates hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving or selling of the same. But this shall not prohibit the Legislature from authorizing the State to contract with any such railroad or other transportation company for the transportation at reduced rates of State officers while traveling in the discharge of their official duties.

And in the sixth column, thirty-fourth line, should read "with damaging insinuations."

In column 6, page 3, should read: They may not ask directly for themselves, but may have some friend that does so (and that is the mode which is very frequently employed. Some friend does so.)

In column 6, page 3, should read: "I will have to refer you to our attorney (Judge Baxter of Nashville, one of the best lawyers the country has ever produced.)"

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## FIFTY-SECOND DAY

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MONTGOMERY, ALA.,

Tuesday, July 23, 1901.

The Convention met pursuant to adjournment, was called to order by the President, and opened with prayer by Rev. Dr. A. L. Andrews, as follows:

"O, Lord, our Lord, how excellent is Thy name in all the earth. How worthy Thou art of the praise and worship of all of Thy creatures. Our Father we would this morning praise Thee, and worship Thee from the very depths of our hearts, ascribing

to Thee the thanksgiving which wells up from our hearts for Thy mercies and for all of Thy kindness. We thank Thee for a night's refreshing sleep. We thank Thee that we are again in our places of duty, face to face with the responsibilities of a new day, and we pause upon the threshold this morning, our Father, to ask Thy presence with us, and Thy blessing upon us. Give this convention Thy richest blessing. Bless the presiding officer, and help him in the delicate, difficult and responsible work that devolves upon him. Help him, that he may have the sympathy and help of every delegate in this hall; and, O, Lord, may this day's proceedings be characterized by a spirit of fraternal love upon the part of each man; and, O, Lord, may the work that is done be not only acceptable unto Thee, but be serviceable to the people who are here represented; and grant, our gracious Father, that in the difficult work that this convention shall undertake this morning, they may have special direction from On High. O, Lord, plans men may devise, but God alone can give us the solution of that difficult question upon which this convention is to enter, and we look to Thee, O, Father, praying that Thou wilt guide Thy servants. Oh, help them, that they may enter soberly upon the work that lies before them, and pity the man who enters lightly upon the task that is now to be taken up; but O, Lord, may each one, realizing the responsible work that rests upon him, realizing the importance of his vote, and of his influence, and of his stand, may each one, thus looking unto Thee, do faithfully as his conscience shall dictate, the work that is given him to do. O Lord, we pray that Thou wilt bless our entire people; bless them of every type; bless them of every nationality; and, O Lord, God, our Father, may prosperity smile upon our people and may success attend them in all of their work. We pray Thee that Thou wilt rule the elements, that the temporal interests of our people may prosper, that the fields of our rich and growing State may bring forth an abundant harvest, and that this may be an era of prosperity to our entire section. We pray Thee to bless our land and country. Bless Thy people everywhere. Relieve the distressed; be kind to the poor, and may the Lord graciously hold in His keeping every soul that calls upon Him for help. Again we pray Thee to bless this Convention; guide them in their deliberations today; bless them in their work, and grant, our Father, that each of us may do faithfully the work that is assigned us to do, and during all the days that lie out before us in life, and when we can serve Thee no longer here, grant that we may die in the faith of the Christian's hope, and may an abundant entrance be accorded us in the everlasting home of the good, in the house not made with hands, eternal in the heavens, and in that better land we will praise Thee forever, through Christ, our Lord and Redeemer, Amen.

Upon the call of the roll 101 delegates responded to their names.



Indefinite leave of absence was granted to Mr. Greer of Calhoun.

MR. PETTUS—I desire to call attention to an error in the stenographic report, on the third page, bottom of fifth column: "PRESIDENT PRO TEM—The question is upon the adoption of the section." The question was upon tabling of the section, and the chair so stated. The correction should be made.

THE PRESIDENT—The correction will be made.

The report of the Committee on Journal was as follows: The Committee on the Journal beg leave to report they have examined the journal for the fifty-first day of the Convention, and the same is correct."

The report of the Committee on the Journal was adopted.

MR. LOMAX—I rise to a question of personal privilege. On yesterday afternoon I was compelled to be in court, and I requested the gentleman from Lauderdale to pair me on the adoption of the amendment offered by the gentleman from Randolph to a certain section of the Legislative Department, in reference to internal improvements. Inadvertently the member omitted to do it. If I had been here I should have voted for that amendment, and as to be paired in that way.

THE PRESIDENT—The Secretary will call the roll of delegates.

MR. SMITH (Mobile)—There is a motion for re-consideration pending.

THE PRESIDENT—There was a motion to re-consider the vote whereby this convention adopted Section 59. There was notice given with reference to another section, but the motion was not formally entered.

MR. BROOKS—I desire to say that I do not care to press the motion to re-consider.

THE PRESIDENT—The question will be upon the motion to re-consider Section 59.

MR. GRANT—I don't really know——

THE PRESIDENT—The gentleman from Mobile has the floor.

MR. SMITH (Mobile)—Section 59 provides, in the first place, that no obligation or liability of any person, association or corporation held or owned by this State, or by any county or other municipality thereof, shall ever be remitted, released or postponed or in any way diminished by the Legislature." That is a provision.

it seems to me, unsafe. "Nor shall such liability or obligation be exchanged or transferred except by payment thereof into the proper treasury." There may be, and frequently is, the enforcement of liability through the courts, and in their enforcement through the courts, property is sold and money of the debtor realized upon the judgment; that under our law is, and should be, an extinguishment of the liability; but under this provision, it would not, until the officer collecting that money, paid it into the proper treasury, making the debtor to the State, county or city, responsible for the official acts of the Sheriff or clerk of the court, into whose hands the money that was realized had been paid. It is practically the same provision that insurance companies undertake to make in regard to their premiums. That is, they authorize an officer to collect the money, but make the assured responsible for the faithful performance of his duties to the company in paying it into the treasury. I have no idea that was the purpose of the committee, but it seems to me to be plainly the operation of that portion of the section, and I think therefore it should be stricken out. As to the provision: "Nor shall such liability or obligation be exchanged or transferred except upon payment of its face value." I have not been able to call to mind the evil that is sought to be redressed. I do not quite understand that provision. It may have some operation, or some force; there may be some evil that it seeks to reach, but I cannot call it to mind, and therefore I include that in the motion. Then it is provided that "this section shall not prohibit the Legislature from providing by general law for the compromise of doubtful claims." It seems to me that the word "doubtful" ought to be stricken out. There is in the administration of governmental affairs frequently a policy or reason for adjusting controversies with its citizens, that is not dependent entirely upon the doubtful character of the claim. There be matter of public policy. Now I do recall one instance in which I personally am interested, but not interested upon the side for which I am now making the motion, because really it is an effort being made to compromise what I do not consider a doubtful claim, or the effort to compromise come up when the claim will not be doubtful, and that it would not be to my interest for them to be able to compromise, but greatly to the interest of the city. It is a matter of this character, and there may be other cities in the same position, where the city of Mobile claims to own certain waterfront and there are adverse claims by the citizens.

If the city established that claim, it would have on its hands a large amount of waterfront that it would not have money to improve. The improvement of that water front would be beneficial to commerce, and the business of the place, yet the claim would not be doubtful: If the city could settle that claim with the individuals the individual could improve it and enhance its value to the commerce of the place, and create a large class of paying proper-

ty. There would be no question as to the claim itself. It would not be a doubtful claim, but it would be one where it would be both to the interest of the city and the citizens, that an adjustment of some sort should be made. I merely call attention to that not that I am interested in this particular section because of that matter but it is only one instance of many that might exist where a municipality should adjust a controversy which does not depend entirely on whether the claim is of a doubtful character. I think the word "doubtful" ought to be stricken out, and I ask the reconsideration of this section for the purpose of introducing amendment such as I have suggested. I will say to members of the Convention that it was not a matter of oversight, or carelessness on my part in not amending the section when it was presented. I was on my feet just before it was read, and stood there until it was passed, but did not catch the eye of the Chair, and the Chair submitted the question, and a vote on the section was taken.

MR. GRANT—Mr. Chairman, that is what I tried to get the floor for the other day when this section was under consideration. My young friend from Limestone thought I was after another article. Now, this is what I wanted. I want to raise the same objection that the gentleman from Mobile has to the proposition. In cases like this you cannot provide by a general law for various cases that arise under a proposition of the gentleman from Mobile, to reconsider this section.

MR. OATES—Mr. President, the purpose of the committee in reporting this section is plain, the phraseology may be a little doubtful. It is perfectly plain what is meant by the language: "No obligation or liability of any person, association or a corporation, held or owned by this State, or by any county, or other municipality thereof, shall ever be remitted, released or postponed or in any way diminished by the legislature." That is a clear proposition. "Nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury." There is probably no necessity for those words "into the proper treasury." "Payment thereof" would meet the wishes of the committee and the purposes of the gentleman. I do not know but that in the event of the Legislature, in legislating on it, might suppose that it so directed them that they would have to provide there would be no release until the money was paid into the treasury. "Nor shall such liability or obligation be exchanged or transferred except upon payment of its face value." Of course that is to prevent any officer from trafficking in claims in favor of the State, and in favor of municipalities, etc. "Provided, that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims." Now, mark you, that is a limitation upon the prohibition that nothnig herein shall prevent or restrict the Legislature from providing by law for the compromise of doubtful

claims. Now, it may be doubtful in the sense that it may not be considered entirely just or due, or it may be in the sense that it is doubtful of collection, but does not restrict the Legislature that it cannot enact proper legislation, and effectuate the clear intention to be gathered from the language of this section? I think not.

MR. GRANT—May I ask the gentleman a question?

THE PRESIDENT—Does the gentleman yield to the gentleman from Calhoun?

MR. OATES—Yes, sir.

MR. GRANT—Do you think in that sort of a case that you can enact a general law that will apply to all cases that will rise in the various counties?

MR. OATES—There is a law now in regard to such things. I don't remember the extent to which it goes, which authorizes the Governor and some of the State officers to compromise.

MR. GRANT—But I am talking about the counties.

MR. OATES—I have no doubt it is just as easy to embrace in that general law the power to compromise as to counties as well as to the State, and I do not think there is any difficulty about that.

In the use of the language "compromise of doubtful claims," evidently the purpose of the Committee was in not striking out "doubtful," and saying for the compromise of claims, not to allow the persons charged with the compromise, too much latitude. We all know, gentleman, that one who is liable to the State or county or municipality, is generally very persistent and persuades those who have power to compromise to yield to them, to make compromises quite favorable to them, through sympathy. Now if you strike out doubtful and leave it for the compromise of claims that destroys in effect the preceding portion of the section so as to say in substance that the Legislature may have power to authorize the compromise of claims of the county or municipality, to compromise all claims authorized to be compromised. It seems there would be no limit whatever. That word was used, no doubt by the Committee, to indicate the class or kind of claims which might be compromised, and much less taken for them, than is demanded or supposed to be due. Now, I do not see that there is anything in this section which may be feared as going to the extent or anything like it indicated by the delegate from Mobile. There might be possibly in this fourth line where the language used is, "except by payment thereof into the proper treasury," such a difficulty, I can conceive of a case where an execution might be in the hands of the sheriff, if he should collect the money on that and not pay it into the treasury, embezzle it, how can you know whether the

debt had been paid, but under the subsequent provision, gathering the spirit of it, from the whole language, I do not think there would be any difficulty even in that case in adjusting it. It is only my duty in this connection to represent the committee and to present their views. I have done that probably in not such an elaborate manner as it might be done. Having discharged that duty, it is with the Convention whether they reconsider and amend it or not. I am satisfied with it, myself.

THE PRESIDENT--The question will be upon the motion of the gentleman from Mobile to reconsider the vote whereby this Convention adopted Section 59. Is the Convention ready for the question?

On a vote being taken, there were 54 ayes and 19 noes, and the motion to reconsider was adopted on division.

MR. COBB--I would like to ask the gentleman from Mobile a question if he pleases. If you strike out the word doubtful, what remains of that section?

MR. SMITH--The power of the Legislature to define what class of claims can be compromised without limitation.

MR. COBB--Does it not utterly destroy the inhibition attempted to be placed by this section upon the power of the Legislature, to dispose of claims due the State?

MR. SMITH--I think not, I do not think the power of the Legislature to dispose of anything has anything to do with the power to authorize municipal authorities to dispose of it.

The Secretary proceeded, for the introduction of ordinances, resolutions, etc., to call the roll.

MR. GRAHAM (Talladega)--I have two petitions, one of which is very short, and I ask permission to have the body of the petition read.

The Secretary read the petition as follows:

To the Honorable Constitutional Convention, sitting at Montgomery, Alabama:

Dear Sirs--We respectfully represent, that whereas, the Railroad Commission appointed by the Governor and paid by the railroads has proven an entire failure, and whereas, the shipper and consumer should have some representation in the naming of rates and making of rules by what is otherwise alien and arbitrary power.

That whereas, the Express, Telephone, telegraph and railroad franchises are given by the State, the power of these franchises to tax should be limited by the State.

We therefore request that your honorable body will give us a commission elected by the people and place all franchises, which have power to tax, within their review.

Wellington Vandiver, C. W. Vandiver, J. W. Hubbard, P. J. Williams, J. B. Woodward, R. H. Woodward, T. D. Boynton, R. Thomas, B. Anderson, T. B. Best, McAlpine & Son, R. L. Sanger, J. H. Samuel, T. R. Williams, S. D. Kyser, J. A. Woodward, John Smith, A. T. Smith, J. W. Treadwell, S. D. Treadwell, W. A. Speer, E. O. Hobbs, R. H. McMullen, L. W. Chardy, S. A. Austin, Otis Cook, J. R. Pullen, B. W. Linden, J. S. McMillan, M. Jackson, R. J. Cunningham, P. L. Howard, J. W. Cowen, E. M. Burr, J. F. Wanorck, J. T. Adams, Jr., J. W. Hurt, W. F. Handley, W. M. Graham, W. R. Thompson, R. B. Baxter, Geo. P. Kyser, R. T. Hicks, H. M. Burt, J. W. Bowman, C. S. Weaver, J. M. Long, George M. Thornton, O. R. Grey, A. O. Riser, G. T. McEldery, H. L. Sims, W. B. Castleberry, James H. Hayden, Ullman Bros., Z. Katzenstein, L. L. Williams, J. A. Edwins, E. R. Hurston, News Reporter, Talladega Mercantile Co., by W. L. Miller, General Manager; Talladega Hosiery Mills, W. T. Billue, W. E. Dickinson, B. B. Simms, W. M. Franks, M. G. McCargo, J. T. Elliott, John C. Williams, C. C. Whilson, J. A. Powers & Co., D. P. McDiarmid, George W. Chambers, J. D. Davis.

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Fanghender & Sharpe, J. B. Robertson, J. T. Barnes, W. C. McMillan, T. H. White, H. H. Kyser, James M. Thornton, Jr., Gohlherz & Lewis, N. Lewis, A. W. Anchors, John M. Jones, J. G. Fowler, J. T. Adams, J. H. Conway, D. R. Van Pelt, W. R. McCary, S. H. Henderson, J. W. Whatley, E. F. Haynes & Co., C. W. Lokey, F. H. Manning, J. F. Klein, P. A. Stamps, W. R. Bishop, E. H. Dryer, S. R. Wheeler, W. Taylor, George Banorlin, J. A. Banorlin, R. L. Barnett, R. W. Henderson, G. A. Mattison, W. H. Moody, W. H. Dillon, S. Witkarskt, Goldstein Bros., R. Heine, W. J. Hubbard, W. B. Hubbard, F. B. Bowie, J. D. Lewis, J. W.

Kind, W. R. Golden, H. L. McElderry, A. E. Bartlett, Rowland & Co., Talladega Fertilizer Co., W. H. Boynton, Highland City Mills, J. H. Hicks, H. Stark Bon.

The resolutions were referred to the Committee on Corporations.

Mr. Heflin (Randolph) introduced the following resolution:

Resolution No. 266, by Mr. Heflin of Randolph:

Resolved, that Capt. John F. Burns, who is the quartermaster of the State Cavalry, and who has served the State faithfully for years without pay, be granted leave of absence for a few days during the encampment that he may perform the duties of his position.

MR. HEFLIN—I move that the rules be suspended and the resolution be placed upon its immediate passage.

A vote being taken, the rules were suspended, and on a further vote being taken, the resolution was adopted.

Leave of absence was granted to Mr. Bulger for today.

Mr. Lowe (Jefferson) introduced the following ordinance:

Be it ordained by the people of Alabama in Convention assembled:

Section 1. Every male citizen of the United States, and every male citizen of foreign birth who may have legally declared his intention to become a citizen of the United States before he offers to vote, who is not under 21 years of age, possessing the following qualifications, shall be an elector, and shall be entitled to vote at any election by the people except as hereinafter provided.

First—He shall have resided in the State at least two years, in the county one year and in the precinct or ward three months immediately preceding the election at which he offers to vote; provided, that any elector who within three months next preceding the date of election at which he offers to vote, has removed from one precinct or ward in the same county shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal; and provided also, that no soldier, sailor or marine in the military or naval service of the United States shall acquire a residence by being stationed in this State.

Second—He shall have made a contribution to the public schools of \$3. by all electors under 45 years of age, and \$1.50 by all electors over 45 years of age, by paying that amount to the Tax Collector of the county during the months of January, February or March of each year subsequent to the last general election and preceding the year in which the election is held at which he shall

offer to vote. The contribution herein provided for shall be called "the school contribution," and the amount received therefrom, less the commission allowed by law to the collector, shall be applied to the public schools of the State; provided, however, that the General Assembly may by law provide that the school contribution made by the residents of the several precincts may be used for the support of and maintenance of the public schools in such precincts. It shall be the duty of the Tax Collector of the county to issue to each person who shall make the school contribution a receipt showing correctly the date of payment, the name of the said person and the precinct and county of his residence, and immediately upon said payment being made, the Tax Collector shall enter the name of the person contributing in a well-bound book to be kept for the purpose, or allow such person to write his own name in said book, which shall be ruled and marked to show the date of payment of the school contribution, age, color and precinct of residence of the persons who make the same. And on or before the 15th day of April of each year the Tax Collector shall certify under oath and file in the office of the Judge of Probate of his county an accurate list of all persons who during the next preceding month of January, February and March have made the school contribution, and the Judge of Probate shall within ten days from its filing cause said list to be recorded in a well-bound book to be kept for the purpose and designated Registration of Electors. The list as certified by the Tax Collector and as recorded in the probate office shall designate the name, age, color and precinct of residence of the persons whose names appear thereon. The Judge of Probate shall give notice by posting at some convenient place at the court house and by publication in one or more newspapers of general circulation, if any be published in the county, once a week for three successive weeks, that the list has been filed in his office, and that said notice shall be given, or the first insertion thereof, be made within ten days from the date of said filing of the list by the Tax Collector, and any citizen whose name does not appear on said list may before the 31st day of May of each year have the right to apply to the Judge of Probate to enter his name thereon, and upon due proof that the school contribution was made by such person within the time allowed therefor, it shall be the duty of the Judge of Probate to enter his name as an elector at the foot of said list as recorded with appropriate remarks indicating that said person's name had been improperly omitted; and upon the refusal of the Judge of Probate to enter the name of any applicant as an elector the latter may appeal from the judgment or decision of the Judge of Probate to the Circuit Court of his county, and the judgment of the Circuit Court upon such matter shall be final. The General Assembly shall provide by law a method for expunging from the Registration of Electors any name or names improperly placed on the list certified by the Tax Collector or recorded by the Judge of Probate



or added to either of said lists by any person. The Tax Collectors of the several counties shall remit to the State Auditor within the first fifteen days of April of each year the amount received by them respectively upon the school contribution, less their commission. It shall be unlawful for any Tax Collector to receive any school contribution for any year after the 31st day of March of that year, and any Tax Collector who wilfully or intentionally adds to or omits from the list herein required to be certified and any Judge of Probate who wilfully or intentionally fails to accurately record the list certified, shall be guilty of a felony. No person whose name does not appear on the said certified list and registration of electors for the year next preceeding that on which the election is held, shall be entitled to vote, except that in case of application by a citizen to have his name added and the judgment favorable thereto of the Judge of Probate or Circuit Court, such person may vote, as though his name were on said list; provided, that nothing herein shall be construed to exclude from voting any soldier or sailor who has fought or was actually enlisted on either side of the war between the States, or who has fought or was actually enlisted in any war to which the United States was a party, but all such soldiers and sailors otherwise qualified may vote without having made the school contribution.

Sec. 2. All elections by the people shall be by ballot, and all elections by persons in a representative capacity shall be viva voce.

Sec. 3. The following persons shall be disqualified both from registration and from voting, namely:

All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; and those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretense, perjury, subornation of perjury, robbery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary or of any infamous crime or crimes involving moral turpitude; also any person who shall be convicted as a vagrant or a tramp, or of selling or offering to sell his vote or the vote of another, or buying or offering to buy the vote of another in any election by the people, or in any primary election, or to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.

Sec. 4. No person shall be qualified to vote or participate in any primary election, party convention, mass meeting or other method of party action of any political party or faction, who shall

not possess the qualifications prescribed in this Article for an elector or who shall be disqualified under the provisions of this Article from voting.

Sec. 5. No person not registered and qualified as an elector under the provisions of this Article shall vote at any State, county or municipal election, general, local or special, held subsequent to the general election in 1902; but the provisions of this Article shall not apply to any election held prior to the general election in 1902, and all electors who shall comply with the provisions hereof in the year 1902 shall be entitled to vote in said elections.

Sec. 6. Any elector whose right to vote shall be challenged for any legal cause before an election officer shall be required to swear or affirm, that the matter of the challenge is untrue before his vote shall be received, and any one who willfully swears, or affirms falsely thereto shall be guilty of perjury.

Sec. 7. In the trial of any contested election, and in proceedings to investigate any election, no person other than a defendant, shall be allowed to withhold his testimony on the ground that he may criminate himself, or subject himself to public infamy; but such person shall not be prosecuted for any offense arising out of the transaction concerning which he testifies, but may be prosecuted for perjury committed on such examination.

Sec. 8. The General Assembly shall pass laws not inconsistent with this Constitution, to regulate and govern elections, and all such laws, shall be uniform throughout the State, and shall provide by law for the manner of holding elections and of ascertaining the result of the same, and shall provide general registration laws, not inconsistent with the provisions of this Article, for the registration of all qualified electors from and after the first day of January, 1903. The General Assembly shall also make provisions by law, not inconsistent with this Article for the regulation of primary elections, and for punishing frauds at the same, but shall not make primary elections compulsory.

Sec. 9. It shall be the duty of the General Assembly to pass adequate laws giving protection against the evils arising from the use of intoxicating liquors at all elections.

Sec. 10. Elections shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, or while going to or returning therefrom.

Sec. 11. Returns of elections for all civil officers who are to be commissioned by the Governor, except Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Industries, Attorney General and Superintendent of Education, and for members of the General Assembly, shall be made to the Secretary of State.

Referred to Committee on Suffrage and Elections.

MR. MERRILL (Barbour)—I have a petition to offer. I ask that the body of it be read, and that the petition be referred to the proper Committee:

To the Honorable Constitutional Convention, Montgomery, Ala.:

Dear Sirs—We respectfully represent that whereas the Railroad Commission appointed by the Governor and paid by the railroads has proven an entire failure and whereas, the shipper and consumer should have some representation in the naming of rates and making of rules by what is otherwise alien and arbitrary power. That, whereas, the express, telephone, telegraph and railroad franchises are given by the State, the power of these franchises to tax should be limited by the State. We therefore request that your honorable body will give the State a commission elected and paid by the people and place all franchises, which have power to tax, within their review.

J. T. Roy, R. A. Ballowe, H. R. Shorter, E. H. Graves, J. Clafo, G. W. Whitlock, Shelly & Co., J. E. Capp, Hiram Hawkins, B. B. McKenzie, C. A. Sentrey, Henry H. Parker, W. M. Stokes, J. A. Davis, Ch. S. McDowell, W. Petry, C. G. Caldwell, A. M. McLendon, C. R. Spurlock, J. D. Holmes, J. D. Schwab, Theo. Pruden, L. Y. Dean & Son, A. Scheuer, M. Scheuer, Henry Bloom, J. Stern, J. E. Watkins, C. M. Thompson, H. Schloss, Thos. L. Moore, C. S. McDowell, Jr., Geo. C. McCormick, W. L. McCormick, E. L. Brown, E. B. Powers, Geo. N. Hancock, W. C. Dunaway, R. F. Nance, J. B. Searcy, J. W. Hurdbut, J. P. Foy, J. M. Johnson, S. M. Carroll, W. S. Goldsbee, J. E. Ingram, J. L. Ross, A. F. Peak, M. W. Sanders, W. C. Standifer, R. F. Bradley, L. W. Troy, T. J. Ramser, C. A. Martin, B. C. Bell, C. P. Roberts, E. M. Jones, J. B. Garland.

Mr. Sanford (Montgomery) introduced the following ordinances:

Ordinance 432, by Mr. John W. A. Sanford:

An ordinance to empower the legislature to construct a canal from the city of Birmingham to the Warrior River by the employment of convicts on such work.

Be it ordained by the people of Alabama in Convention assembled, That the legislature shall have power to authorize the construction of a canal from the city of Birmingham to the Warrior river by the employment of persons convicted of crime, on such work, and to provide for the collection of tolls on freight and fares from passengers, for the benefit of the State.

Referred to Committee on Legislative Department.

Ordinance 433, by Mr. Jno. W. A. Sanford:

An ordinance to limit corporations in the holding of lands in Alabama.

Whereas, the growth, power and influence of corporations are a menace to the rights and welfare of the people.

Therefore, Be it ordained by the people of Alabama in Convention assembled, That no corporation, domestic or foreign, or any combination of such corporations, shall purchase, own or hold in any manner, more than a thousand acres of land in Alabama, without the permission of the legislature of the State.

MR. SANFORD (Montgomery)—I ask that that ordinance be referred to the Committee on Amendment of the Constitution and Miscellaneous Matter.

THE PRESIDENT—It seems to the Chair that the proper reference would be to the Committee on Corporations.

MR. SANFORD—That Committee has not been heard from any more than the searchers for the north pole, and if referred to it will not be heard from any more than we do of the chariots of Pharaoh.

THE PRESIDENT—Does the gentleman wish to enter a motion to refer the ordinance. In the opinion of the Chair, the proper reference would be to the committee on Corporations. The gentleman may enter a motion, and it is within the power of the Convention to give a different reference if it sees fit.

MR. SANFORD—Then I move Mr. President, that it be referred to the Committee on Amendment of the Constitution and Miscellaneous Matters.

Upon a vote being taken, the motion to refer to the Committee on Amendment of Constitution and Miscellaneous Matters was lost.

THE PRESIDENT—The ordinance is referred to the Committee on Corporations.

When Mr. Sentell's name was reached on roll call, he yielded to Mr. Weatherly of Jefferson.

MR. WEATHERLY—I have a petition to offer, which I introduce by request.

THE PRESIDENT—Does the gentleman desire to submit a motion that the petition be read before the Convention? Without a motion, the rules do not provide for the reading of petitions.

MR. WEATHERLY—I ask that it be referred to the Committee on Suffrage and Elections.

THE PRESIDENT—The petition will be referred on request of the gentleman to the Committee on Suffrage and Elections.

Does the gentleman desire the petition included in the stenographic report?

MR. WEATHERLY—Yes, sir.

THE PRESIDENT—The stenographers will be requested to take note of the petition.

Anniston, Ala., July 20, 1901.

To the Constitutional Convention of Alabama:

Gentlemen—Being deeply interested in the work of the Convention, especially in the suffrage plan, proposed by the Suffrage Committee, and having been requested by several members of your body to make such suggestions as might seem to be pertinent, I have taken the liberty to prepare, with some care, certain amendments, which seem to me to be necessary to properly safeguard the registration under the plan proposed by the committee, in order to secure a complete and perfect registration of the qualified electors in the State.

The suggestions I make relate alone to the registration of the life electors, as provided in the report of the committee. The entire plan for such registration is contained in Section 10 as reported by the committee. (See page 9 of Report, Section 10). This section provides: "The General Assembly shall provide by law for the registration, after the first day of January, 1903, of all qualified electors. Until the first day of January, 1903, all electors shall be registered under and in accordance with the requirements of this section, as follows." Then follows seven subdivisions of Section 10, setting forth the plan of registration, which the committee proposed.

It is provided in one of said subdivisions that "unless he shall become disqualified—any one who shall register prior to the first day of January, 1903, shall remain an elector during life, and shall be required to re-register only in case of a change of residence, on production of his certificate." (Report, p. 13, line 13). It will be noted therefore, first, That the persons registered under the plan proposed in Section 10 will be voters for life—will constitute a life electorate whose status as such will be beyond the control of the Legislature.

Second—If there is a defect in the plan proposed by the committee, it will be beyond remedy after the ratification of the Constitution, because that section purports to be complete in itself; to set forth all that it is proposed shall be enacted on the subject embraced in said section. It is self-executing. The Legislature cannot change it. This being true, gives to this section an in-

creased importance. Any plan of registration, which may fix the status of every voter in the entire State during life, should be well hedged about to prevent fraud in the registration. No plan of ballot reform based upon a fraudulent registration, or based upon a plan of registration under which fraud is possible, is deserving of a name. These considerations make it necessary that the plan of registration should be hedged about with proper safeguards, so as to provide not only for a full and fair registration, but also to prevent any fraud in its execution. Unless proper safeguards are thrown around the registration, the Convention will discredit itself before the thoughtful men of the State. The greatest argument made in favor of the calling of the Convention was to purify the ballot. If the plan proposed by the committee admits of greater fraud than now exists or if it admits of any fraud whatever, it should be amended so as to prevent it. No man who really desires the purification of the ballot can object to any amendment of the plan proposed, which will insure the people of the State a full, correct, and honest registration. And no man who is appointed Registrar, and who intends faithfully and honestly to perform the duties devolving upon him as such can or will object to any reasonable amendment, which will insure the proper performance of that duty, by fixing penalties for any failure on his part honestly to perform those duties. No Registrar should be held, or sought to be held liable for any mistake of judgment on his part, but he should be held liable criminally for a dishonest or corrupt performance of his duties. The plan proposed by the committee does not do this. I, therefore, suggest the following amendment:

First—The first amendment I suggest is to provide that no name can be registered except on the personal application of the voter, and that no one man can register for another. If the Registrars can register a man without his knowledge, they can register a name without their being any voter of that name, and they can register a man against his will; and they can register one man for another. Unless it is provided that no registration shall be made except on the personal application of the voter, and that one man cannot register for another, the flood gates of fraud and corruption will be open wide, and our State will be more than ever at the mercy of those who are willing to commit fraud at the ballot box. The danger of such a course, it seems would be apparent. That a life electorate of this State can be registered without the personal application of the voter would be revolutionary. The report of the committee does not require a personal application by the voter before his name can be registered on the list of life voters. It does not even require an application under oath to register. Section 5, page 12, line 62, simply gives the Board of Registers "power to examine under oath or affirmation all applicants for registration." It does not require the application to register to be made under

oath, it gives the Board power to examine the applicant under oath, but does not in express terms require the application to be made under oath. Under the plan embodied in the report, the registrars can ride along the road or sit in their office, and register any name that may come into their minds. They can register every man who lives in the county, none of whom need know that they are being registered.

They can register every man who ever did live in the county, whether living or dead. It may be replied that the Registrars will not do this; that is not the question, can they? If they can, the plan should be amended so they cannot. I therefore suggest, as an amendment, the following:

"Insert between line 61 and 62 on page 12, the following: No person shall be registered, except on his own personal application, under oath to the Board of Registrars, upon a blank furnished by the Secretary of State, and prepared under the advice of the Attorney General, with the view to testing fully the qualifications of each applicant for registration, and to furnish full and accurate evidence afterwards as to his personal identity. The Board of Registrars shall endorse on each application its correct date, and whether registration is granted or denied to the applicant."

"Second—The second amendment pertains to the purging of the list of registered voters filed by the Board of Registrars. The plan as reported has no such provisions. Under it there is no way provided for getting a name off the list after it once gets on; nor is there a way to revise the registration list at any time. This, it seems to me to be absolutely necessary. It is true the plan provides for an appeal in favor of one who is denied the right to register. There can be no reasonable objection to that provision. But an appeal should also be given to any citizen of the State who desires to contest the right of any voter to register. Means should be provided for purging the list of names of dead men, and men removed and those who become insane, and those convicted of crime, or otherwise disqualified. It seems to me that the necessity of some such provision as this would be so apparent as to render argument unnecessary. I would suggest therefore, the following amendment:

First—Insert after the words "qualified electors" in line 2 on page 9, the following:

"For purging the registration lists of names illegally entered thereon and of persons illegally registered, and of those who may die, become insane, convicted of crime, or otherwise disqualified as an elector under the provisions of this Constitution, and for keeping in proper form the list of male idiots and insane persons and all males convicted of crime."

Second—Insert after the words "of the board," in line 74, on page 12 the following:

"Any citizen of the State may at any time have a list of registered voters purged of any names or names illegally entered thereon, or the name of any person who, at the time of registration, is qualified under the provisions of this Constitution, or who afterwards become so disqualified."

Third—The third amendment is intended to secure absolute fairness and accuracy in the registration. No citizen who honestly favors the purity of the ballot, can object to this amendment. And no registrar who intends honestly and faithfully to perform his duties will object. It does not in any way hamper the Registrar in the honest discharge of his duty, nor seek to hold him liable in any way for any mistake of judgment on his part. It does not in any way affect him in the honest discharge of his duty. This amendment is as follows:

"Insert between lines 91 and 1, on page 13, a new section to read as follows: Any elector who registers for another, or who registers more than once; and any registrar who enters the name of any elector on the list of registered voters, without such elector makes application in person and under oath on a form provided for that purpose to be registered as hereinbefore provided, or who knowingly registers any person more than once, or who knowingly enters a name upon the registration list as a registered voter when no one of that name applied to register, shall be guilty of a felony."

Fourth—The fourth amendment requires all applications and testimony offered before the Board or against the application, to be returned by the Board for or against application, to be returned by the Board of Registrars along with the list. It will take two amendments to properly provide for this. I have prepared said amendments as follows:

First—"Insert after the word 'person' in line 4, on page 13, the following:

"Together with all applications to register, which were filed before them, and all evidence introduced before them for all evidence introduced before them for or against each application."

Second—"Insert between lines 10 and 11 after the word 'original', and before the word 'list,' on page 13, the following:

"Applications for registration, and all papers relating thereto, and the."

It will be noticed that none of the amendments which I suggest will in any way embarrass the Registrars in the honest discharge of their duty. These amendments all seem to me to be necessary in order to perfect the plan of registration proposed by the Committee. If the suffrage is to be regulated so as to secure



honest elections, and remove any excuse for pretext for fraud, on account of the presence of the large number of ignorant and vicious voters, we cannot be too careful in providing a system of registration. If we would eliminate the class of voters in whose hands the right to vote is a menace to good government and good morals, proper safeguards must be placed around the plan of registration, and stringent penalties provided for the corrupt registration of any voter. If the Convention does that, its work will command the respect of patriotic and thoughtful men everywhere. If it fails to do that, it will discredit itself before the people of the State. I cannot believe that the intelligent and patriotic members of the Convention will object to any amendment of the plan proposed by the Suffrage Committee that will secure to the people of the State a full and honest registration of the qualified voters of the State.

None of the amendments herein suggested are offered in the interest of any man or set of men, nor in the interest of any section. The only object sought to be accomplished is to provide safeguards around the plan of registration, affecting all the people of the State, which will result in the registration being had according to the purpose intended by the Committee. Not being a member of the Convention and there being but a very short time until the Convention will begin the consideration of the suffrage plan as proposed by the Committee, I am under the necessity of availing myself of this method of presenting these suggestions. If there is any merit in any of them, I feel very sure that they will receive the consideration they deserve. With great respect,

I am very truly,

Richard B. Kelly.

Referred to Committee on Suffrage.

THE PRESIDENT—The next order is unfinished business.

MR. SMITH (Mobile) — I desire to offer an amendment to Section 59 of the report of the Committee on Legislative Department.

THE PRESIDENT—The present order is unfinished business. The next order will be the special order, the consideration of the report on Legislative Department. This report was concluded on yesterday, but this morning there was one Section reconsidered. It seems to the Chair that it would be in order to proceed with the consideration of that Section at this time.

MR. OATES—There was notice given on yesterday that there would be a motion this morning to reconsider another Section. I do not know whether that will be insisted on or not.

THE PRESIDENT—Was that Section 47?

MR. OATES—I believe so.

THE PRESIDENT — The gentleman from Mobile (Mr. Brooks) indicated that he did not care to press the question to reconsider Section 47. The special order will now be consideration of the report of the Committee on Legislative Department having under consideration Section 59, which was reconsidered by the Convention this morning. The gentleman from Mobile offers an amendment, the Secretary will read the amendment.

The Secretary read the amendment as follows :

“Amend Section 59 of the Article of the report by the Committee on Legislative Department by striking therefrom all of the Section after the words ‘by the Legislature,’ in line 3 of the Section, and preceding the word ‘provided’ in the sixth line, and by striking out the word ‘doubtful’ in the seventh line.”

MR. SMITH—I have no argument to make. I have stated the purpose of the amendment, and it is the amendment to which I referred at the time I moved to reconsider.

MR. JONES (Wilcox)—I wish to offer an amendment to the amendment of the gentleman from Mobile.

The Clerk read the amendment as follows :

“Strike out in the fourth, fifth and sixth lines the words ‘into the proper Treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value,’ and add the word ‘the’ before ‘payment’ in the fourth line; also strike out in the seventh line ‘for the compromise of doubtful claims,’ and add ‘for adjusting, compromising or settling claims on such items as may be just and reasonable.’

THE PRESIDENT—The question will be on the adoption of the amendment to the amendment offered by the gentleman from Wilcox.

MR. JONES (Wilcox)—In Code 3753, there is a provision made for the compromise of claims in favor of the State. There is nothing said about whether claims be doubtful or not. It reads in this way: “The Governor, Attorney General and Auditor have authority to adjust, compromise, and settle on such terms as they may seem just and reasonable, any claim of the State against any person or any public officer or his surety or because of the negligence or default in the safe-keeping, collection, or disbursement of public monies, or funds or property by any officer having charge or custody thereof.”

Now the amendment to the amendment uses the language of that statute, leaving out the word “doubtful,” and substituting the language of the Statute, “authorizing the adjustment, compromis-

ing and settling of claims." In line 4, the words "into the proper Treasury" are stricken out, leaving it so it will read in this way: "Nor shall such liability or obligation be extinguished except by payment thereof."

MR. PITTS (Dallas)—I would like to ask the gentleman a question.

THE PRESIDENT—Does the gentleman yield?

MR. JONES—Yes sir.

MR. PITTS—You propose to leave it, "nor shall such liability or obligation be extinguished except by payment thereof." I would like to ask this question: Suppose a bond is forfeited, and the Judge has good reason to believe that the bond ought to be reduced, would this prohibit him from reducing the bond?

MR. JONES—I think not.

MR. PITTS—A bond for the appearance of a defendant, and that bond is forfeited, and he has a good excuse, and it ought not to be made final for the full amount, does it prohibit the Judge from reducing that bond to a less amount?

MR. JONES—No sir, it would be merged in the judgment and the payment of the judgment would be the extinguishment of the claim for the full amount.

MR. PITTS—It says "No obligation or liability of any person, association or corporation held or owned by this State, or by any county, or other municipality thereof, shall ever be remitted, released or postponed or in any way diminished by the Legislature; nor shall such liability or obligation be extinguished, except by payment thereof." Wouldn't that entirely prohibit it.

MR. JONES—No, I think not. The claim would be merged in the judgment, and the payment of the judgment would be settlement of the claim in any Court.

MR. SMITH (Mobile)—I have no objection to the amendment offered by the gentleman from Wilcox. It is perfectly agreeable; I don't know that I am at liberty to accept it personally. There is nothing between the two views that appeals to me at all. One does for me just as well as another.

MR. FERGUSON—If I am in order, I have an amendment which I wish to offer.

THE PRESIDENT—The subject that the Convention has under consideration now is Section 59. The gentleman may withhold his amendment and offer it at a later period.

MR. FERGUSON—I will do so.

MR. MERRILL—The introduction of Section 51 by the Committee in this Article is what I regard as a departure from the policy of the State established by the laws now in existence, and it is an encroachment or entry upon the Legislative powers that has no place in the Constitution. The Code, Sections 3753-54, prescribes and creates a Board of Compromise in the State whose duty it is to take charge of all these claims in favor of the State, and arrange and settle them as to the board seems proper. It gives them almost plenary power over these matters, and if the State should possess the power of compromising its debt, why not allow counties and municipalities the same right and power. Why is it we want to go into these matters. Has any evil arisen? I know of none, and I know of no reason why the policy of the State should be changed by the incorporation of this article into the Constitution. I therefore move that the section and all amendments to it be laid upon the table.

MR. OATES—I will ask the delegate from Barbour to withhold that motion for a moment. I will yield the floor to him.

THE PRESIDENT—Does the gentleman from Barbour withhold temporarily his motion.

MR. MERRILL—Yes, sir.

MR. OATES—I want to say on behalf of the committee, that some of the members of it—

MR. GRANT—The gentleman is not in order, the motion is to lay upon the table.

MR. OATES—It was withdrawn.

MR. MERRILL—I withdrew the motion for the purpose of giving the chairman of the committee an opportunity.

MR. OATES—Some members of the committee seem to have had a wider scope of information than the gentleman from Barbour, and the object and purpose of this section was in the minds of the committee who reported it, to put a limitation and restriction upon that plenary power which he says the statute gives the State Board and those of municipalities and counties, because it had come to the knowledge of some of the members of that committee that this plenary power had been abused, and that compromises had been made which were unnecessary and were sacrifices of just demand and demands which have been made available to the State, counties and municipalities, and it was an effort on the part of the committee—

MR. MERRILL—Will you permit an inquiry. Under this section as you have it, allowing the compromise of doubtful claims, is it not a fact that if a compromise is effected on that idea, that it is a settlement of it and the end of it?

MR. OATES—As a matter of course. It is first a denial to the Legislature to dispose of these claims—"No obligation or liability of any person, association or corporation held or owned by this State, or by any county or municipality thereof, shall ever be remitted, released or postponed or in any way diminished by the Legislature." The Legislature shall not do it, "nor shall such liability or obligation be extinguished except by payment thereof, into the proper treasury." I admit that "into the proper treasury" are unnecessary and they may as well be stricken out: "nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided, that this section shall not prevent the Legislature from providing by general law for the compromise of doubtful claims." That is entirely proper. The Legislature should have that power, but under the law as it stands, boards have a right to compromise any claim whether doubtful or not. Their sympathies may be worked upon, and in a government like ours, by the people in which all officers are candidates for re-election to the same office, or for some other office, it is very easy to persuade them that a claim between the citizen and the State or county or municipality should be compromised.

MR. GRANT—Is the motion to table? And is not the gentleman speaking to that motion?

THE PRESIDENT—It was withdrawn temporarily in order that the chairman might discuss the question.

MR. OATES—I am doing this in justice to the committee that the Convention may see exactly what was aimed at. The language may not be perfectly apt all through, but I insist that the idea is a good one. There ought to be a restriction upon this power, and for the reasons I have already stated, you invest men, a board, representative of the county or municipality with authority, and it may be that the liability is a hard one in some respects, but a just one to the county, State or municipality, and yet against some person or persons who are of great influence, and may appeal to those who have the right to compromise, and they say, Oh, well, it is a pretty hard case on him, and the State, county or municipality can stand it, and they are disposed to compromise and do compromise some claims every day, which ought to be paid, and it is to remedy this evil and put a proper restriction upon those who have the authority to compromise and settle, that the word "doubtful" was used so as to indicate to the Legislature in carrying out this provision, that it was not for the compromise of liabilities which are collectable and just, but such as were doubtful, in some sense. Therefore, I do not think the amendment should be adopted. Now the amendment offered by my friend, the delegate from Wilcox, if that be substituted, following the statute, it is no restriction, and you may just as well strike out all after the word

"Legislature," as is the amendment of the delegate from Mobile. I think it is much better to perfect the language of this section so as to effectuate the object of the committee in making the report which was a good one. I now renew the motion of the gentleman from Barbour to table the section and the pending amendments.

A vote being taken, the motion to table was lost.

THE PRESIDENT—The question will be upon the amendment offered by the gentleman from Wilcox to amendment offered by the delegate from Mobile. Is the Convention ready for the question?

MR. DUKE—I ask for the reading of the amendment. I would like to have the original section read as amended with all the amendments, as it will read when amended.

THE PRESIDENT—There are two amendments. It is very difficult for the Secretary to just place the amendment as the section would read amended.

MR. DUKE—Then just read the two amendments.

THE PRESIDENT—The gentleman has the section before him. The Secretary will read the section.

MR. JONES (Wilcox)—As I understand the gentleman from Mobile, the amendment offered was accepted by him and therefore there is but one before the house.

MR. SMITH—I did not understand that I could accept; I was perfectly willing to accept; I thought it was the property of the Convention and I had no right to accept it.

THE PRESIDENT—The gentleman can obtain unanimous consent, perhaps, to accept the amendment.

MR. SMITH—Very well, sir.

THE PRESIDENT — The gentleman asks unanimous consent.

MR. PITTS (Dallas)—I object.

MR. OATES—Probably I have authority of the Committee and I ask unanimous consent to amend in the fourth line, by striking out the words "into the proper Treasury."

There being no objection the amendment was allowed.

MR. GRANT—I want to ask the gentleman a question. Will the gentleman strike out the word "general?"

MR. OATES—I think that would destroy largely the purpose of the section.

THE PRESIDENT—The question would be upon the adoption of the amendment offered by the gentleman from Mobile as modified and accepted by the gentleman from Wilcox.

MR. COBB—The gentleman from Chambers has asked to have the section read as modified by the amendment of the gentleman from Wilcox.

THE PRESIDENT—The Secretary will read the amendment of the gentleman from Wilcox, and if the members will follow the reading of it and compare with the original section they will be able to understand.

The amendment was again read.

MR. BLACKWELL—I move to lay the amendment on the table.

THE PRESIDENT—There was a motion to lay the section and the amendment on the table voted down. The question will be upon the amendment offered by the gentleman from Wilcox, which the gentleman from Mobile has obtained unanimous consent to accept.

MR. OATES—As I understand the motion of the gentleman from Morgan is to lay the section and the amendment on the table.

THE PRESIDENT—To lay the amendment

MR. PITTS—I objected to the acceptance of the amendment offered by the gentleman from Wilcox.

THE PRESIDENT—I thank the gentleman for calling the attention of the Chair, the Chair overlooked that fact. So the question will be upon the amendment offered by the gentleman from Wilcox. As many as favor the adoption of that amendment will say aye.

A vote being taken the amendment was lost.

THE PRESIDENT—The question will be upon the adoption of the amendment offered by the gentleman from Mobile. The Secretary will read the amendment.

The Secretary read the amendment as follows: "Amend Section 59 by striking therefrom all of the Section after the words "by the legislature" in line three of the section, and preceding the word "provided" in the sixth line, and by striking out the word "doubtful" in the seventh line."

THE PRESIDENT—Is the Convention ready for the question?

A vote being taken the amendment was lost, on a division, by a vote of 35 ayes and 44 noes.

MR. OATES—I move the previous question on the adoption of the section as amended.

A vote being taken the previous question was ordered, and a further vote being taken the section was adopted.

MR. FERGUSON—I have an amendment to offer.

The Clerk read the amendment as follows: "Amend the Article on Legislative Department by adding the following section: The legislature may dispense with the necessity of indictment in cases of grand larceny, but justices of the Peace shall have only preliminary jurisdiction in such cases."

THE PRESIDENT—The question will be on the amendment offered by the gentleman from Jefferson, to add a section to the article.

MR. FERGUSON — There are no politics whatever in the amendment proposed. There is no play to the gallery in it, there is not a vote in it, Mr. President. I simply offer it as a means of securing speedy trials in that class of cases in this State, a class of cases that predominates all other crimes in the State of Alabama. There is an average of 1,200 cases of that character in the State of Alabama year by year. I have had occasion when the Article on Preamble and Declaration of Rights was under consideration, to offer in substance the same amendment to Section 9 of that article. I understood from a number of delegates, Mr. President, that they opposed it upon the ground that it gave jurisdiction to justices of the Peace in that class of cases. I have so amended it in the proposed section here so as to cut off any idea that justices could have jurisdiction in cases of grand larceny. Now, Mr. President, I desire to present it again for the consideration of this Convention in order to save the State of Alabama a great deal of money in the feed of prisoners, and to give speedy trials to many that are accused of crime. As I had occasion to say before, when the matter was under consideration, there are many cases where a party accused of grand larceny who has been committed by a justice of the peace for the offense of grand larceny, has to lay in jail five or six months before he can ever get a trial. Now, gentlemen of the Convention, the proposed amendment simply gives the legislature the power to dispense with the necessity of indictment in that class of cases. It does not say that they must do it, it leaves it to the sound judgment and discretion of the legislature as to whether they will do it or not. If they exercise that discretion and that sound judgment, it will enable many a man that has to lay in jail perhaps five or six months to go before some court of competent jurisdiction and enter his plea of guilty where a warrant is sworn out in the case, or if he does not desire to plead guilty he may be tried before some court of competent jurisdiction under the warrant which may be sworn out in that particular



case. As I said before, when the matter was under consideration, the distinction between grand and petit larceny is of the most shadowy character, has long been shadowy and indistinct in some cases. The maximum penalty for petty larceny is twelve months hard labor for the county and a fine of \$500 in addition, at the discretion of the court, or jury trying the same; the minimum penalty for grand larceny is \$100, hard labor for the county or one year's imprisonment in the penitentiary. It is rare, indeed, Mr. President, that the maximum punishment is ever given in a case of grand larceny. Now for these reasons, gentlemen, I merely ask you to put it in the power of the Legislature of this State to put it within their power to dispense with the necessity of indictment in that class of cases. As the Constitution now stands, and as it will stand if you do not adopt this Section, it will never be within the power of the Legislature of Alabama to change it, it will have to remain as it is that where a man is bound over for grand larceny that he must lay in jail at the expense of the State and be deprived of the means of a speedy trial, and it is for these reasons that I ask you to pass this amendment.

MR. OATES—I most heartily concur with the views expressed by the gentleman from Jefferson, and the purpose aimed at. But the Section has no proper place in the Legislative Department, it belongs in the Judicial Department, and I am not only in favor of his proposition as he presents it, but I am in favor of enlarging it, and would, if I had an opportunity to amend it myself, so that the courts may dispense with an indictment by a grand jury where they cannot get them in cases of outrageous murders, because you cannot suppress crime of that kind in any other way in the State of Alabama. Therefore I will move to lay the amendment offered on the table, and will co-operate with my friend to take it from the table and put it in the Judicial Department when that comes up.

MR. FERGUSON—Am I in order to reply?

THE PRESIDENT—The motion to table is not debatable.

MR. FERGUSON—I will ask the gentleman from Montgomery to withdraw his motion to table the amendment.

MR. OATES—I am not disposed to cut off a delegate from anything he wishes to say, but I am greatly desirous of finishing this report.

THE PRESIDENT—The gentleman from Jefferson is not in order, as no delegate can speak more than once except the Chairman of a Committee.

MR. FERGUSON—May I ask the gentleman from Montgomery a question, then?

THE PRESIDENT—Does the gentleman from Montgomery yield?

MR. OATES—I will yield.

MR. FERGUSON—Wouldn't that have the effect of weighting down this amendment that I propose. I want it to go through on its individual merits.

MR. OATES—It tends to do that, to weigh it down, but I will vote for your proposition—I will vote to insist on your amendment.

MR. MACDONALD—I rise to a point of order. There is a motion to table.

THE PRESIDENT—The Chair will call the attention of the delegate from Jefferson to Rule 14. No delegate shall speak more than once to the same question. The question is on the motion of the gentleman from Montgomery to lay on the table the amendment offered by the gentleman from Jefferson.

Upon a vote being taken, the motion to table was carried.

MR. WHITESIDE—I have an amendment to offer.

The Secretary read the amendment as follows:

“To amend the Article on Legislative Department by adding Section — as follows: “The Legislature shall have no power to take away any right of action or destroy any defense to any suit after such suit has been commenced.’”

MR. WHITESIDE—I move the adoption of the amendment.

MR. OATES—I ask that it be read.

The amendment as offered by Mr. Whiteside was read.

MR. OATES—That is already provided for and is wholly unnecessary, and therefore I move to lay it on the table.

On a vote being taken, a division was called for and the motion to lay on the table was carried, 78 ayes to 13 noes.

MR. OATES—I move that the Article on Legislative Department—

MR. BROOKS—I will ask that the gentleman yield to me until I offer an amendment.

There were expressions of dissent.

MR. BROOKS—I think I ought to have the right to offer an amendment.

The amendment by Mr. Brooks was read as follows:

## Section —.

Any person holding office under this State who shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass or transportation, or pass or ticket at a discount, other than is sold to the public generally, shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding two hundred and fifty dollars (\$250) and at the discretion of the court trying the same, in addition to such fine, may be imprisoned for a term not exceeding two months, and upon such conviction shall be subject to impeachment and removal from office.

Any railroad or transportation company, or officer or agent thereof who shall grant a free pass or shall at reduced rates not common to the public, sell tickets for transportation to any such person, shall be deemed guilty of a misdemeanor, and is liable to punishment, except as herein provided.

No person or officer or agent of a corporation who gives any such free pass, free transportation or sells ticket for transportation at rates hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving or selling of the same. But this shall not prohibit the Legislature from authorizing the State to contract with any such railroad or transportation company for the transportation at reduced rates of State officers while traveling in the discharge of their official duties.

Any solicitor who shall fail faithfully to prosecute a person charged with the violation in his county or circuit of any provision of this Section which may come to his knowledge, shall be removed from office by the Governor, after an opportunity of being heard in his defense.

MR. deGRAFFENREID—I rise to a point of order. On yesterday, just before the hour of 6 arrived, a motion was introduced and passed the Convention to the effect that this Convention remain in session until the Article on Legislative Department had been concluded. The Article on Legislative Department was concluded on yesterday, and notice was given that a motion to reconsider a section would be made this morning, under the rules of the Convention, that motion would have to be heard this morning, but as the Article was concluded on yesterday, the amendment offered by the gentleman is not now in order.

MR. BROOKS—It is a little singular that two other gentlemen were allowed to offer amendments this morning and I should not be allowed.

THE PRESIDENT—It seems to the chair that the motion to reconsider the section which was passed upon this morning

brought the Article on the Legislative Department back before the Convention and that it would be in order while the Article is up for consideration, for the Convention to amend it and add additional sections if they see fit so to do. The Chair will overrule the point of order.

MR. BROOKS—I have very little to say on this subject. I simply wish to call the attention of the Convention to the fact that this ordinance affects both parties to the contract or to the agreement by which a pass is issued or accepted. There is an ordinance now pending before this Convention which makes no provision for a penalty against a railroad that grants a pass or sells a ticket at rates below those common to the public. This proposition refers to both sides of the contract by providing a penalty against the issuing of a pass or sale of a ticket below the usual rates on the part of a railroad or by the acceptance of the same on the part of an officer of this State. It goes further than that. It provides some means of getting the evidence which is necessary to successfully prosecute and convict the parties who accept the pass. According to the present resolution or ordinance as it is now pending, there is nothing of that sort, and it would be difficult to get the evidence necessary to convict. Then it reduces the penalty from \$1,000 as an outside penalty to \$250 and, instead of allowing the court, upon conviction, to imprison for six months, it limits the time of imprisonment to two months. It also provides that the State may have authority to contract for a special rate for all officers of the State while engaged in the discharge of their duty. Then it provides that the solicitor shall be dealt with who does not faithfully discharge his duty. Now, all I have to say is that I hope the friends of the measure will not allow this to be laid upon the table. If it is desired that it be amended in any particular, come forward with your amendments, and let us make it such an ordinance as will be acceptable to this Convention at large, but I pray you that you do not put it on the table. Let us decide the question now while we are on this Article on Legislative Department. Now is an acceptable time, and now is as good a time as any.

MR. SAMFORD—I desire to state to the Convention what nearly every member of the Convention already knows—that is, that this matter has been referred to the Committee on Corporations—a committee composed of honorable delegates of this Convention—with instructions to report an ordinance along this line. Everybody, or every member of this Convention, and everyone who is familiar with the proceedings of this body, know my attitude upon this question, and, therefore, they will understand that it is not in antagonism to the spirit of the amendment that I make the motion I intend to, but it has been thoroughly ventilated before the Convention during the consideration of this ordinance.

and it has been thoroughly discussed. The members know what they want upon the subject. The Committee on Corporations, as is generally known amongst the members, is preparing an ordinance along that line, to be considered with the report from the Committee on Corporations.

MR. BROOKS—Will the gentleman from Pike allow me to interrupt him a moment?

MR. SAMFORD (Pike)—No, sir.

THE PRESIDENT—The gentleman from Pike decline to yield.

MR. SAMFORD (Pike)—For that reason, and to enable this question to be taken up decently and in order, and at the time it should be taken up and incorporated in the proper place in the Constitution, and that it shall be well considered at the time, along with the proper Article in the Constitution I move that this amendment be laid upon the table, to be taken up and considered with the report of the Committee on Corporations.

MR. BROOKS—I desire to say that I accept that; that was the purpose of my asking the gentleman to allow me to interrupt him.

Upon a vote being taken, the motion to lay the amendment on the table was carried.

MR. OATES—I move that the Article on the Legislative Department be engrossed and ordered to a third reading and be printed.

MR. SAMFORD—I will inquire if he wants it printed before it is read the third time?

THE PRESIDENT—The rule provides for its printing after it is passed on the third reading.

Upon a vote being taken, the motion of Mr. Oates was carried.

THE PRESIDENT—The special order this morning will be the consideration of the report of the Committee on Suffrage and Elections.

MR. WHITESIDE—Before that matter is taken up, I ask unanimous consent to have a petition read and referred to the proper committee.

The petition was read as follows:

To the Honorable Constitutional Convention, Montgomery, Ala.:

Dear Sirs—We respectfully represent that whereas, the Railroad Commission appointed by the Governor and paid by the Railroads has proven an entire failure; and, whereas, the shipper and

consumer should have some representation in the naming of rates and making of rules by what is otherwise alien and arbitrary power; that whereas, the express telephone, telegraph and railroad franchises are given by the State, the power of these franchises to tag should be limited by the State. We, therefore, request that your honorable body will give us a commission, elected by the people, and place all franchises, which have the power to tax, within their review.

R. N. Warnock & son, D. P. Haynes & Bro., J. M. Ragan, P. M.; C. J. Dodd, W. F. McCully, W. O. Turnipseed, Miller & Sons, Thos. H. Barry, T. A. Howle & Co., Blue Spring Mills, Thos. Sprinkle, Burton & Co., N. H. Bagley, Oxford Oil Co., W. F. Hanna, J. M. Mims, A. W. Ligon, J. S. Kelly, S. W. Hingson & Son, Draper & Co., J. F. Smith, Jno. H. Ingram, J. R. Drafter, W. C. Gray, Gunels Bros., Humphries & Co., E. A. Walker & Co., W. F. Higgins, F. C. Moorefield, C. S. Phillips, J. B. Privett & Co., A. O. Humphries, A. Harrison, J. H. Yoe, Thad M. Gwin.

Referred to Committee on Corporations.

THE PRESIDENT—The special order this morning will be the consideration of the report of the Committee on Suffrage and Elections.

MR. COLEMAN (Greene)—sought recognition.

MR. OATES—I rise for the purpose of making an inquiry in regard to this discussion.

THE PRESIDENT—Does the gentleman from Greene yield?

MR. COLEMAN—If I knew what his inquiry would be.

MR. OATES—From the rule which I understand was adopted in regard to it, I do not understand whether there is to be a preliminary general discussion before taking up the measure for consideration section by section. The course in the progress of the consideration of bills and ordinances is to agree upon a time for general discussion and when that ends, to consider the measure by sections under a more limited and restricted time for speeches. I would like to hear from the delegate from Greene and to have the ruling of the Chair on that proposition. I think we would not lose time, but would probably save time to have a general discussion say of an hour and a half or two hours, or less as the case may be, preceding the taking up of it by sections. I make that suggestion in the interest of fair discussion, and I think it is in the interest of economy of time. I believe we will save time by it.

MR. COLEMAN—I had thought that this question would be considered differently from the rule which we have adopted in the consideration of other articles. I do not know where a general

discussion would lead to. So far as the committee knows, the agreement of the committee was unanimous except upon one or two question. Of course, the whole Convention will have an opportunity to present its views as it sees proper, but I had supposed that the article on Suffrage and Elections would be treated as the other articles; that there would be a statement by the chairman—a mere statement—and that we would then proceed to consider it section by section. I have no objection myself personally.

MR. OATES—I make the suggestion because of the universal interest in the measure and its importance. It may be that time would be saved in this way to have a general discussion. Of course, a limit of thirty minutes has been fixed by the order of the Convention. But if we have a general discussion, some delegates who have not served upon this committee and have not heard the discussion of the various questions might from a general discussion get more fully into it, and probably less time would be consumed in amendments to sections as we proceed than would be if no such general discussion proceeded.

MR. COLEMAN—I believe if we undertake to pursue that course, we will be discussing this report for a week or ten days without making any progress at all. With the number of delegates here having different views upon the wording and principles involved all the way through, there would be no end to the discussion.

MR. OATES—My suggestion was made hoping that the delegate would make a motion to put a limit upon it, to have a general discussion not to go beyond a certain time, and not to turn the Convention loose on it as a general debating society.

MR. COLEMAN—I will ask then, who shall engage in this discussion? Is the Chair to pick out certain men to discuss it, or the chairman or the whole Convention? How could we make any progress at all?

MR. OATES—I will state that the course pursued. I know in the Congress of the United States (a pretty good authority) is that where there is a difference of opinion and gentlemen desire to discuss the question, they give their names to the presiding officer and he will take a list of them. Of course a good many get in, but they cannot run beyond the time fixed.

MR. BEDDOW — I make the point of order that there is nothing before the House.

MR. COLEMAN—This is the hour appointed for the consideration of the report of the Committee on Suffrage and Elections.

MR. SMITH (Mobile)—There has been some discussion between one or two gentlemen and myself as a member of the Rules

Committee. Conferring, however, with the chairman of this committee with the view of determining what will be the proper time for the consideration of substitutes for the entire article that will be presented, and thereby preventing interruptions, I understood under the rule that the proper time to introduce a substitute for the entire article would be after the article had been passed upon section by section, and was offered to the Convention for adoption as a whole, but gentlemen interested in substitutes desire that question be presented, so there would be no confusion, and these substitutes would not be offered during the discussion, and if permissible to ask the Chair whether my understanding to the rule is not a correct one?

THE PRESIDENT—The rule on that question, as the Chair understands it, is that the friends of the measure will have a right to perfect it, amend it and put it in whatever shape they desire before the Convention would entertain a substitute to the entire article. After the Convention has considered the article and put it in such shape as desired, a substitute would then be in order to the entire article.

MR. COLEMAN—That, Mr. President, is my understanding of the rule.

MR. BANKS—After an article or ordinance has been completed, would it then be necessary to reconsider the whole ordinance before a substitute for it could be introduced?

THE PRESIDENT—The Chair thinks not. The attention of the Convention is called to the fact that the substitute would be offered. The Chair will try to conduct the proceedings in such a way that a motion to reconsider will not be necessary.

MR. LOWE (Jefferson)—That was about the question I was rising to. I introduced this morning an ordinance covering this matter with the view that it might appear in the stenographic report, and in order that each member might have an opportunity of considering it this morning. In this report, as I understand it, it will be practically impossible to amend it Section by Section, because several sections apply to and cover the same matter and I thought it would be better that the Convention should have the advantage of the discussion coming from the members of the Committee who had so long and carefully and patiently considered this question, and that, after having the benefit of that discussion, a substitute might then be offered without requiring a suspension of the rules, and as I understand the Chair the substitute would be in order at the close of the debate, and the action of the Convention upon the report of the Committee without a suspension of the rules?

THE PRESIDENT—Yes.



MR. JONES (Montgomery)—If a substitute were offered, would that be treated as an amendment so as to limit the debate to ten minutes?

THE PRESIDENT—Under the rule as reported in this case, the debate has been extended to thirty minutes and a substitute would be regarded as an amendment.

MR. LOWE—The thirty minutes rule?

THE PRESIDENT—Yes sir. The Chair does not see how we can avoid a motion to reconsider, unless there is a special rule brought in on the subject, except by pursuing this course; that a Section of the report would be read and amendments would be entertained and either accepted or rejected and when the Convention has offered and considered such amendments as it may desire, without finally adopting the Section proceeding to the next Section, and so on through the Article, and then the question would be upon the adoption of the Article as read.

MR. SAMFORD—It occurs to me in that connection that with a matter so important as this and so lengthy, it is going to result in endless confusion, because, if you go through this Article without adopting it, Section by Section, when it comes to the offering of a substitute for the entire Article, I fail to see how it can be confined to a substitute to the entire article. But why would not every Section be open to any substitute or any amendment that the Convention might see fit to propose? And it occurs to me that we are going to get among the breakers along this line if we do not make some special preparation for it, if special preparation is necessary. I make that merely as a suggestion.

THE PRESIDENT—It might be well to adopt some special rule on the subject. The Committee on Rules might bring in some rule to the effect that the adoption of this Article Section by Section would not cut off a motion for a substitute for the entire Article.

MR. LOWE (Jefferson)—It was in view of that parliamentary difficulty as I understood it that in that consultation the gentleman from Mobile, from the Committee on Rules, suggested an agreement. If the Convention unanimously agree, there need be no report from the Committee on Rules. The gentleman from Mobile suggested that it would be agreeable to the different contending interests here that upon the conclusion of the consideration of the report of the Committee, that then the substitute might be offered to the report of the Committee as amended, as it stands, upon the conclusion of the consideration of the report. Of course, that substitute would be open to amendment. If this Convention now agrees to that proposition, there is no necessity for a report from the Committee on Rules; however, I have no objection to the

matter being referred to the Committee on Rules, I simply desire to reserve the right to myself to offer a substitute to the report of this Committee, it being absolutely impossible to amend it Section by Section, because there are many Sections bearing upon the same subject, and if the Convention now agrees to the proposition as stated by the gentleman from Mobile, from the Committee on Rules, it will be the order of business as I understand it.

THE PRESIDENT—It seems to the Chair some provision should be made on that subject. The Chair will entertain a motion.

MR. COLEMAN—If the President and the Convention will consent, I move that we dispense with business for five minutes and a rule can be prepared and presented to the Convention which will meet the end and difficulty suggested, and I move that we suspend if necessary for five minutes.

MR. FITTS—I offer this resolution.

THE PRESIDENT—The gentleman from Greene moves that business be suspended for five minutes, in order that some rule be prepared to cover the question.

Upon a vote being taken, the motion to suspend was carried, and a recess taken for five minutes.

MR. SMITH (Mobile)—I desire to notify the members of the Rules Committee that the Committee will meet in the Senate Chamber immediately.

MR. FITTS—I offer that resolution and ask that it be referred to the Committee on Rules.

The resolution was handed to the Committee on Rules, but not read.

The Committee returned at the end of the recess.

MR. SMITH (Mobile)—I am instructed by the Rules Committee to offer the following resolution:

The Clerk read the resolution as follows:

Resolved that the article reported by the Committee on Suffrage and Elections be considered, adopted or rejected section by section and after every section has been so considered and adopted substitutes for the entire article may be offered and acted upon without any motion to reconsider the prior action of the Convention."

MR. SMITH (Mobile)—I move the adoption of the resolution as reported by the Rules Committee.

Upon a vote being taken the resolution was adopted.

MR. COLEMAN (Greene)—Mr. President and delegates of the Convention; it is not my purpose to undertake to make a strictly legal argument at this time upon the various provisions contained in the report of the Committee on Suffrage and Election, but rather to state the conditions which confront us, the circumstances which led to the calling of this Convention, and the way in our opinion to relieve the people of the State of Alabama from the great burden that now rests upon it. I think it pertinent in this connection, in order that our conditions may be understood, not only at home but abroad, to review, by a statement of facts, which transpired many years ago, that the people who were disposed to criticise us in our conduct may better understand what we have passed through and the end which we aim to attain. That this Convention was called by the Democratic party cannot be denied and that it was made a party measure, and as such, sustained by the party. The duty rested with us to construct an organic law which will operate fairly and justly to every inhabitant in this State without regard to party or previous condition. I do not believe that the article prepared is properly understood. There has been an effort made to impress the people of Alabama that the delegates of this Convention were under no obligations or pledges to the people of Alabama. It should be remembered that the three Conventions of Alabama which last assembled as a Convention of the Democratic party, declared that no white man should be disfranchised except for crime. Mr. President and delegates of the Convention, it has been said that this provision was hastily adopted, without deliberation. I cannot conceive how three Conventions, successive Conventions, could unanimously adopt the same provision without having attention called to it, this provision, or the charge made that action was without due consideration. It may not be improper to state here that the platform adopted by the Convention which last assembled in Montgomery was not framed without consideration and deliberation. Present at that time were two members, one a member of Congress, and an ex-member, a distinguished editor of a leading paper in this State and leading delegates from various sections of the State. It may not be improper to state here that the Chairman of the committee, instead of writing the word "white man," wrote the words "qualified voted," in order to obviate some of the difficulties and troubles which seemed to have arisen since that time, and it was after due consideration, due deliberation, that the Committee on Platform inserted the words "white man." Those are the facts in regard to the preparation of the platform which was presented to the Convention. In addition to that, Mr. President, at a time when it seemed that the calling of this Convention was in danger, hanging between adoption and rejection, the chairman of the Campaign Committee issued a circular to every member, and they met in pursuance to that call in Birmingham, and in order that the people of the State might be assured thereof without a dissenting voice,

pledged themselves to stand by the pledges made to the people in Convention assembled, and it was, I have no doubt, that assurance which succeeded in calling together the Convention that is now assembled. Under these circumstances, Mr. President and gentlemen of the Convention, I cannot see, myself, how any man can claim exemption from these obligations, except he be convinced in his own mind that to stand by them would involve his honor under the oath he has taken to support the Constitution of the United States. I would ask no man to violate his oath, but if he can comply with the oath that he has taken, and perform his pledges to the people of Alabama, I see no escape from the duty imposed upon him, not only by the successive meetings of the Democratic party in Convention assembled, but by reason of his personal pledge to carry them out. And I think, Mr. President and delegates of the Convention, that a delegate should examine, impartially, without bias or preference of opinion, desiring to arrive at the truth, and the truth only, as to whether or not he can comply with these pledges and at the same time not violate his oath. I do not think that he should consider it in any other light but simply the light is arriving at the truth, and the truth only. If, therefore, the Committee on Suffrage and Elections has presented to this Convention a system upon the subject of franchise which will enable it to comply with the pledges and at the same time not violate our oaths, it seems to me it is our bounden duty to do so. Mr. President and delegates of the Convention, this government was founded by white people. Its institutions have been preserved and enforced by the white race of this country, and it is within the past few years that the negro became a qualified voter, and citizen of the United States. In most of the States of this Union the proportion of such voters is so small that their influence is not felt in the general election. It is only in the Southern States that he has become an important factor, and under the present laws is a menace to our civilization, our happiness and prosperity. I would not violate any provision of the Constitution, but it is my opinion that we should go to the utmost limit allowed us to continue in control of this State and its political interests, that race of people which so long has preserved its institutions and brought us through so much trouble, to our present prosperous condition. (Applause.) I hope the Convention will bear with me as I proceed to show that this conclusion is not reached by any prejudice against the negro. There are but few, comparatively, of the old slave-holders who are alive at this time, and who are present in these deliberations. Mr. President, I am not ashamed to say that I was among those few. Not only myself, but my ancestors before me were slave-owners in this State. The third generation back was one who in his feeble way undertook and put at stake his life in order to give validity to the Declaration of Independence, and which resulted in the framing of the Constitution of the United

States. Protected in his rights, as others were, no man, read in the history of his country, will undertake to say that without such provision the Constitution of the United States would ever have been adopted. We felt sure, and so did they, that they had a right to regard these persons as property, and that it was secured by the organic law of the country. So far as the moral question arises, I am one of those old foggy men who believe in the inspiration of the Scriptures, and we are told that Abraham was a friend of God, and Moses was an inspired law-giver, and until some higher authority than the Creator and omniscient God Himself shall arise and declare a different code of morals, I am one prepared to stand justified by the record of that book. Now, Mr. President and delegates of this Convention, bear with me a few moments. Born on a plantation, raised up with the negro, I have had an opportunity to know his weak points and his good traits. Mine may have been the history of others, but I remember well during the Civil War, or the war between the States, sending my negro man from Vicksburg, surrounded as it was, with Federal troops, with a letter to my wife, and he carried it safely home, and I never doubted that he would do so. I wish to say in behalf of this race that at the battle of Missionary Ridge, when I had the misfortune to be shot down, he was inside of the Federal lines for two or three days, and he worked himself out, and found me in the hospital, and waited upon me for three months, and accompanied me home. I wish to say, moreover, for these people that upon my plantation for the great part of the time there was no white man but a negro was in command as superintendent, and my wife and children apprehended no trouble or danger whatever from our slaves. He was as loyal as a man could be. This is the history of the negro, as a slave. In 1865, the year that emancipation became effective, I had the fortune to be elected solicitor of the Fifth District, including the counties of Greene, Marengo, Sumter, Pickens, Choctaw, where the negro was most numerous, or perhaps as numerous, as in any counties in this State in proportion to population. As Solicitor at that time I had every opportunity to judge him and his characteristics, and I venture to say that during that time we heard not of a single case of assault upon our fair women, or of murder, waylaying, or other violations of the law by them of an aggravated character except that of theft, which was then characteristic of the race. That was his attitude from the year 1869 to the days of reconstruction. At that time the carpet-bagger arose, and the scalawag in this country, and I do not wish to be understood as saying that all of those who came from the North, and designated as carpet-baggers were bad men, but the majority of them who came here, came not for a good purpose. Then we had the midnight meetings. Thousands would gather upon the word sent; inflammatory speeches were made to them, and this peaceful race, within a short time, had developed the character of savages. The race

which had been quiet so long converted this whole country into pandemonium. I have seen, with my own eyes, a thousand of them around a ballot box, and not a white man was permitted to reach the ballot box. I have known, delegates of this Convention, 1,500 armed negroes to enter a little village on one occasion, for the purpose of creating consternation and fear among the whites. I have known a judge trying a case, and a Republican judge at that, and under the testimony came to the conclusion that the defendant should be held or committed for trial. I have known these defendants to rise from their seats and deliberately shoot the judge through the head, scattering his brains upon the floor. I know, and the parties are living now, who dressed in Federal uniforms met by appointment known leaders of the negroes and they declared that they were ready to arise with the axe and the torch and burn and slay men, women and children. I have been told by a delegate upon this floor that he knew of a negro boy 16 years of age who voted sixteen times, once for every year of his age, and defied arrest or investigation under the laws passed in reconstruction days when that race was in power. We know that our State was pillaged, our counties strangled, and the main purpose seemed to be that of plunder and destruction. Now I mention these facts for this purpose. Here was a peaceable race of people, obedient in law, and here was pandemonium raised when they were no longer restrained by law, and were inflamed and led. Now what happened at that time?

MR. GRANT (Calhoun)—Will the gentleman allow me to interrupt him? I want to say—

THE PRESIDENT—Does the gentleman yield?

MR. COLEMAN (Greene)—I am discussing the question at this time.

MR. GRANT (Calhoun)—I have a very perfect recollection of all those kind of performances—

THE PRESIDENT—The gentleman will be seated.

MR. COLEMAN (Greene)—At that time, and under those circumstances arose the organization that was denominated Ku Klux. This organization was guilty of excesses and were not countenanced. It soon disappeared. That was the condition of this country when the people resorted to a more peaceful and effective method securing predominance in this State through the ballot box. I wish the fact of our condition to be known, and while there are those of us alive yet who know these facts, I think they should not be forgotten. Now if the delegates will consider, since that time, the white race has predominated in this State, and the people who have voted at all elections, and preserved us, have been the white race, and that with regard to literacy or illiteracy.

They have all voted, and they have voted from the first establishment of government in this country down to the present time. Contrast these two people. See what condition we were in when the negro predominated in this State, and made our laws for us, and enforced them, and see our condition when it passed from them back into the hands of the white men. Can anybody look upon those two pictures and come to any conclusion other than that the negro, as a race, is incapable of self-government? and has no appreciation of the duties and obligations of a citizen of a Republican form of government or that the white man, by reason of belonging to the white race, or his education, or some other characteristic, is competent to rule and can be trusted with the State's government with perfect safety.

The facts cannot be denied, and seem to me sufficient to satisfy everybody of the truth of the preamble to the platform of the Democratic party, that the one race is capable of self-government as a race and the other as a race should not be trusted with the right to vote. Now, Mr. President, and delegates of the Convention, having these matters in view, having our pledges before us, we have tried to frame an article upon suffrage, which would preserve our institutions, and we have at the same time tried to comply with the Fifteenth Amendment of the Constitution, and have admitted to the exercise of suffrage every competent negro in the State. I do not doubt, and I have heard no man yet say, that every person of the negro race who ought to vote has not been admitted to vote, and the only question that seems to trouble some of our people is whether the white man shall vote, and not the negro. That is what confront us today. I think it is our duty as Democrats, and as citizens of this State, to comply with our pledges, and admit to the exercise of the franchise every white voter if it can be done legally. So far as the details of the plan submitted are concerned they will come up as we proceed section by section. The Committee is not partial to anything they have said or written in the article. We have presented to you that which seemed to us the best solution, but if any man has anything better than that which we have presented to you, no one will join in its adoption more readily and satisfactorily than my self. I know full well delegates of this Convention, that during the few years that will be spared to myself and to men of my age, we will be sure to maintain our supremacy and good government. But we look to conditions that may exist fifteen, twenty or thirty years from now, when the old men will be gone, and when the question will be for the younger members of this Convention, and our children who have not yet arrived at the state of manhood. That is what we are looking out for; that is what we desire to provide for, and I shall most sincerely invoke your earnestness and ability in solving this great question, which is now under consideration. We do not believe that it is an insult to confer the franchise upon the descend-

ants of those who wore the gray. It is recorded that Moses of old said to the children of Israel, "Teach the statutes to your children, as you lie down; teach them as you walk in the way and as you get up;" and we believe that the old Confederate soldier has taught his children to love their country and its laws and government. Mr. President, it is no dishonor to say to a Confederate soldier's son that the State recognizes that you are a better citizen and have a better right to vote than the negro who can read and write. I think it is due him, and I would rather this right hand of mine would become palsied rather than it should write "disfranchise" against one of their names. I would rather my tongue would cleave to the roof of my mouth, before I would pronounce so unjust a sentence against him. Those are my sentiments upon this question, and I have no doubt, as a lawyer who has investigated the case, that his enfranchisement is perfectly constitutional. Mr. President, I may have been betrayed into saying too much, and I will not say anything more——

Cries of "Go on, Go on."

MR. COLEMAN—Now, then, to refer rapidly to another provision. Men who have objected to what might be called the "understanding clause" surely have not apprehended its true meaning. Surely, they have not understood that it embodies the Federal law of the United States with reference to naturalization of foreigners; surely, they have not considered that before that could be declared unconstitutional, the courts would have to declare unconstitutional the laws which have been adopted by Congress, applicable to the naturalization of foreigners. The thing that troubles me, is not what is now to transpire or to transpire within the next few years, but that which comes after that, and whether the permanent requirements are sufficient or not to protect the people in their rights, the civilization of this country, and the happiness of the people, in the permanent plan. That prescribes a property qualification, an understanding qualification to read and write, and it also provides for those who have been regularly engaged in some lawful employment for a year. There never was a sentence, or provision, more perverted, or less understood, than that provision in the Article reported by the Committee on Suffrage and Elections. The Committee was at least a day, and a half or two days selecting those words. They used the word "engaged" because it had been often interpreted by the Supreme Court of this State, and it is not, as I have seen in the papers, a provision which requires not only that a man should always be employed, but that he should have some profitable employment. There is nothing further from its meaning. We all know that a man is engaged in business when he holds himself out as a party ready for employment. As has been often illustrated in the case of a lawyer—he is engaged in the practice of law whether he has a client or not.



A physician is engaged in the practice of medicine if he holds himself out as a physician and is really. That is his business without regard to the number of patrons that he may have. The purpose of the qualification was to reach people passing from place to place without employment—tramps, as it were, though not strictly within the definition of the word tramp, as defined in the Code of Alabama. I would willingly accept any substitute or amendment which could reach or supply the end intended by that provision. Mr. President, I believe I will say nothing more at this time, and move that we take up this report section by section in accordance with the rules of this Convention.

THE PRESIDENT—In the opinion of the chair, the rule adopted this morning will cover the object intended to be secured by the motion just made. The Secretary will read the first section.

The Secretary read Section 1 as follows:

Section 1. Every male citizen of this State who is a citizen of the United State, 21 years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people.

MR. BEDDOW—I desire to offer an amendment.

The Secretary read the amendment as follows: "Amend by adding after the words 'United States' in the first line of Section 1, the following words, 'and every male person of foreign birth who, before the adoption of this Constitution, may have legally declared his intention to become a citizen of the United States.'"

THE PRESIDENT—The question will be upon the adoption of the amendment offered by the gentleman from Jefferson, Mr. Beddow.

MR. BEDDOW—Mr. President, I feel safe, after hearing the learned argument of the chairman of this committee, that this amendment will be adopted without a dissenting voice. As he has truly stated in his argument, the Democratic party of this State is pledged in framing the suffrage Article for our new Constitution, to do it in a manner so as not to disfranchise any white person now entitled to vote under the present Constitution. If Section 1 is adopted as submitted by the committee, there are no doubt thousands of persons throughout the State of Alabama, who are good white citizens, who have declared their intention to become citizens of the United States under the laws made and provided therefor, that will be deprived of the right of suffrage. In order to post myself upon this question, I put myself in correspondence with the clerks of the courts of record in my county, and I find that in the

County of Jefferson there are at least 1,500 white citizens who have declared their intention to become voters, who have not, by reason of the law requiring a residence of five years, been enabled to perfect their citizenship. I feel sure that no member of this Convention has any desire whatever to go back on the pledges so recently made by us to the people of this State, and that this amendment as offered by me will be adopted. By scanning the amendment, it will be seen that it relates only to those who at the time of the adoption of this Constitution have declared their intention to become citizens of the United States. The amendment will speak for itself.

MR. WATTS—I would like to ask the gentleman a question. I understand you to say there are 1,500 citizens who are willing to become citizens of Alabama, but for the inhibition of the law declaring against their voting until they have been here five years.

MR. BEDDOW—No, sir; under the law, the intentions has got to be declared, and they cannot perfect their citizenship for five years.

MR. WATTS—But does not the present Constitution of Alabama give such citizens the right to vote on declaring their intention?

MR. BEDDOW—It does; yes—but under Section 1 of this Article, they would not be entitled to vote if this Constitution is adopted.

MR. LOWE (Jefferson)—I rise to second the amendment of my colleague, the gentleman from Jefferson. I did not care to interrupt the argument of the distinguished chairman of the committee, because it appeared to me that the first section of the report of the committee does not support what is said. I do not care to tell him we were unwilling for one side of this controversy to get up a monopoly upon the wearing of the grey. I did not care then to say that no one side of this controversy should have a monopoly upon an appeal to history and the recollection of reconstruction times. I thought, Mr. President, as the report of the committee of which the distinguished gentleman from Greene is chairman, was read, it would be found how far the inconsistency existed between the remarks which the gentleman submitted, in so pathetic a manner, and the report and the language that the gentleman sought to put not upon the statute books, but in the organic law of Alabama. The gentleman referred to the declaration often repeated in Democratic conventions, that no white man was to be disfranchised. There is no such provision anywhere in the report of this committee, and the first section of the report of the committee aims to disfranchise those now entitled to vote in Alabama. Mr. Chairman, I second the adoption of the amendment of the gentleman from Jefferson.

MR. CUNNINGHAM — I had in mind precisely the same amendment that was offered by my colleague from Jefferson, Mr. Beddow. I shall not take up the time of the Convention in discussing the merits of this question, except to say this: I believe that the inhibition resting upon us in regard to the disfranchisement of white men applies to those citizens of foreign birth who, under the existing Constitution, have declared their intention to become citizens of the United States, and, therefore, have been permitted to vote in State, county and municipal elections. If I understand the gentleman's amendment aright, it does not apply to citizens of foreign birth who may hereafter undertake to qualify as citizens in this State. I will ask the gentleman from Jefferson if that is not his amendment?

MR. BEDDOW—That is my amendment.

MR. CUNNINGHAM—It applies only to those who are here now, and I sincerely hope, Mr. President, and I appeal to this Convention, to adopt that amendment. I believe it will be a mistake not to do so, because you undoubtedly knock out a great many white citizens of this State who are now qualified voters. In conclusion, let me say, Mr. President, that for the last eighteen years I have had a very large, and rather extensive, personal experience and business relationship with the foreign population in Jefferson County, and during that entire time, Mr. President, to my personal knowledge, not exceeding half dozen have been convicted of crimes in the State of Alabama. Only about three have reached the penitentiary of your State and possibly as many or a few more, have been sentenced to hard labor for the county. In their debt-paying capacity, Mr. President, there is perhaps no one class of citizens in the State of Alabama that excels them; their credit, as a rule, is good; they pay their debts; they are law-abiding citizens. I will say the majority of them at least vote the ticket of the dominant party of this State. Already there is some dissatisfaction among this class of our people who believe they are indeed disfranchised under the first section of this ordinance, and I sincerely hope the committee will accept this amendment and urge its being adopted by this Convention.

MR. LONG (Walker)—I am heartily in favor of the amendment offered by the gentleman from Jefferson. I can see no reason why foreigners from the land from which our forefathers came should be disfranchised and others should be enfranchised by simply wearing the gray. I cannot conceive of any banks that would honor the draft of a Confederate soldier and yet recognize the rule of honoring the draft of the son of the Confederate soldier. I cannot conceive why the people in the county of Jefferson, and in my own beloved county of Walker, who have come there to gather the crops that nature makes, and toil beneath the surface of the earth, should be disfranchised because they have not been in the

State of Alabama five years. I can testify to their virtue, their manhood, and their right of self government. I can testify further to all that is said, that these people are white people, coming from the land that bore us long, long centuries ago, and from which our forefathers came from across the sea. If we intend to adopt a war measure, why not go back and adopt European laws as well as the laws of the United States. Why should we say that foreigners are required to reside in the State of Alabama for five long years, when a simple fellow or something of the kind of a Confederate soldier, has not the same restriction placed around him? I appeal in justice and for humanity's sake, to this Convention not to ignore the right of any white man in my country to vote, who has worked down beneath the soil with a lantern on his head guiding his way, and disfranchise him under this first Section of the report of the Committee on Suffrage. If we want to do justice to the white man, let us put in the word "white" right in front of the word "male," between the word "male" and "citizen" in the first Section of this Article. I for one, am in favor of, and strictly in favor of, and will vote for, any amendment to that end, and will take my medicine like a man. We should say every white male citizen of the United States, or a white person who has declared his intention of becoming a citizen shall have the right to vote, and no one else. I am in favor of putting that in, and of meeting the issue like men. There has never yet been a man in the halls of Congress that has dared to deny the right of a State to limit the right of suffrage. They have put restrictions around it, and provided for punishment for those States that violate it. What would be the effect if we should put in there "every white male citizen of this State, and every white male citizen of the United States?" What would be the effect? We would simply go up and plead guilty to violating the Fourteenth and undoubtedly the Fifteenth Amendment of the Constitution, like a man before the bar of justice that comes up and pleads guilty to carrying concealed weapons. What is the penalty? Why the penalty in this case would be to reduce our representation in the Electoral College, and in the Congress of the United States. I would rather have one white man to represent Alabama then than to have nine now, if we had the words "white male citizens" in our Constitution. I am willing to vote for it. I despise a makeshift. I detest it. I am willing to come up to the rack and take my fodder, or no fodder, as the case may be. I do not like a makeshift, and I don't like this makeshift which disfranchises any of the white people of Alabama. Put the word "white" in there and I will support it. Let us take our medicine like men. Let us go to the congress of the United States and say that Alabama, the first State upon the roll of the United States, recognizes only the white people to vote. Let us do that like men and take the penalty. I cannot see any objection thereto.

MR. GRANT—Why don't you invite Mr. Pettus to offer his amendment for this thing and vote for it?

MR. LONG—How is that?

MR. GRANT—Why don't you ask Mr. Pettus to offer his ordinance introduced some days ago and you can vote for it.

MR. LONG—Mr. President, I have not the honor of knowing to what the gentleman refers. I know nothing about Mr. Pettus' ordinance, but if Mr. Pettus' ordinance stated my proposition, I stand here today as one of 155 men in this Constitutional Convention who is ready, willing and anxious to vote for it.

MR. GRANT—Why don't you ask him to introduce it now?

MR. LONG—Now, Mr. President, what I do object to is the action of the white people here assembled, that will disfranchise many men in my county simply because they have not been residents of the United States for five years. I believe in justice to those who are entitled to it. I believe when the Ark landed long centuries ago and the descendants of Noah started out, that Ham was cursed, and I believe that this is a white man's country, and that not a single white man should be disfranchised, and I am opposed to the enfranchisement of any negro in the State of Alabama. Let it be Booker Washington or any one else. I yesterday liked to have been mobbed here, because I wanted to maintain the purity of the Caucasian blood I wanted then and there to put the words "Indian and Chinese in a law prohibitory of marriage, and I heard men upon this floor get up and boast that the proudest blood in Alabama was the blood of the Indian. I want to state if that blood is proud, it was made so by Caucasian blood, and I want to state further that ours is the blood that God intended to rule the world, and it is only that blood which I recognize that flows in my veins and I believe flows in the veins of the majority of the delegates to this Convention.

Now, Mr. President, I do sincerely hope that the amendment offered by the gentleman from Jefferson will be adopted. It does not mean the enfranchisement of a single negro, but it means the enfranchisement of many honest white laborers in the State of Alabama, and why should we, the sovereign people of Alabama, violate our pledges here in the first section of this ordinance upon suffrage, and ignore a right that has existed ever since Alabama has been a State in the American Union, and disfranchise some of our best citizens. As far as I am able to, I will always respect that home across the seas from which my forefathers came. I do not think the people that cross the ocean now are any worse than the people that crossed it long centuries ago. I do not believe that we are called here to disfranchise any man simply because he comes from a European country. I do not believe that we are ask-

ed to do that, or that the sovereign white people in the State of Alabama will endorse their disfranchisement by the first section of this ordinance on suffrage. As I stated before, I am willing to allow none but white men to vote, and I shall offer that proposition of no one else does, before this suffrage clause is completed. I am willing to take my medicine like a man.

I am willing to go before the Federal Congress of the United States, before partisans from Ohio and other States, in which the negro holds the balance of power, and say we plead guilty to the charge. I am willing to say we once hated the American Union. Have the manhood and stand up and say that no one but white people shall be allowed to vote in the State of Alabama. I believe that is the better way to do it. I believe that this is the only fair way of doing it. I have no respect for one of these dodging granddaddy clauses, that excuses everybody because his daddy wore the grey. Some of the sorriest men I ever knew wore the grey. Some of the best men I ever knew wore the grey. Some of those people, and the descendants of those people, carried with them the mark of rascality written upon their face. I believe in a clause that will give the white men preference in the State of Alabama and to say that nobody but white men shall vote, but I do protest against the first section in this article, that disfranchises good white men because they have crossed the seas inside of the last five years.

Leave of absence was granted to Mr. Jones (Montgomery) for today, and to Mr. Reese of Dallas for today, and the Convention adjourned.

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#### AFTERNOON SESSION.

The Convention was called to order by the President, and the roll being called showed the presence of 105 delegates.

Leaves of absence were granted Mr. Kyle for tomorrow and Mr. Thompson for yesterday.

THE PRESIDENT—The special order of business for this afternoon will be the consideration of the report of the Committee on Suffrage and Election. The Convention had under consideration when it adjourned at noon Section I. The Chair recognizes the gentleman from Mobile.

Mr. Graham (Talladega) took the Chair.

MR. SMITH (Mobile)—The question as to the difference between the Constitution of 1875 and the provision of the Article reported by the Committee on Suffrage and Elections was considered in the Committee at very considerable length, and the Committee intentionally changed the qualification so as to deprive foreigners who had not become citizens of the United States, but

who had declared their intention to become citizens of the United States, of the right to become participants in the elections in this State. It was not believed by the Committee that that class of people as a general thing were interested in and attached to a Republican form of government. They come here from various classes, and the largest proportion of emigrants coming to this country are not of the most intelligent or the most desirable class. They are people that come here for remunerative wages, who seek employment in the mines and the other industrial pursuits of this country. They come here, not seeking the benefits of our governmental institutions, nor seeking the freedom of the United States of America. They know little and care less about the governmental affairs of this country, and many of them live here from year to year and raise families without really knowing the organization of our Government, or the system of its laws and legislative enactment. Experience has taught the United States that they are not safe and good citizens until they have lived here at least five years, and shown to the satisfaction of the court by their conduct during that period that they are men of good moral character and attached to the principles of the Constitution of the United States, and well disposed to our Government and the welfare of the same. If it be true that it takes that length of time to test them, and to test if their purpose here is to enjoy the advantages that are to be derived from this Government, and if we must have an opportunity to observe them and observe their conduct, in order to determine whether they are proper for citizens of the United States, it seemed to the Committee that it would be turning loose an unfit element into the electorate, to allow them to participate in elections in Alabama, until some opportunity is afforded our people for judging of their character and their conduct and their attachments to our form of government. In my section of the State there is a diversity of elements. The Italian comes in, ignorant not only of our law, but of all existing law. The Swede is left there from the ships, with a tendency to freedom and a belief in it. The German, the Scotch and the English of the better classes come there with money and invest in the material interests of our country, but few of them, however, come under an idea that they are bettering themselves in the governmental sense. They come not for freedom, but for business advantages, and there are gentlemen in our community of high standing, of high education, good men and good citizens, who have raised families there, but who are still devoted to the institutions and laws of the country from which they came. I have in mind one who is a good, intelligent, honest, prosperous man, that has been there nearly thirty years. He is married to an American wife, has raised a large family of children, his every interest is there with him, but he still believes in the government and laws of the Fatherland, and is today sending his children back to Germany to be educated and imbued with the laws and institutions of that country.

MR. SANFORD (Montgomery)—Has he never declared his intention to become a citizen?

MR. SMITH—Never has, and never will, so far as that is concerned. We have another such there, one of the finest men I ever knew, of fine intelligence and a good citizen. He has become a citizen of the United States, but he has been twenty years making up his mind to see if he is attached to the principles of the Constitution of the United States, and because he was unwilling to say so until recent years, he has waited until this time to take out his papers of citizenship. If men of that character so cherish the memories of the countries from which they come, and remain attached to their principles, what can you expect of the laborer, the man who is without any knowledge as to our form of government, has the customs and laws of his native state instilled into him from childhood, what do you expect of him, when he comes here? Do you expect him to appreciate our Government, do you expect him to exercise properly the privileges of the franchise, and to do it for the advancement of a Republican Government? I think not. Our country is not yet filled with inhabitants, but the tide of immigration increases year by year, and the day may come when the majority of this country will be largely of a foreign element. To allow the foreign element the electorate would place it in their hands to at least modify, if not to control, our institutions, and I believe it to be dangerous to admit any of them to the electorate unless they have not only declared their intention, but have actually become citizens. Many gentlemen of the Convention know that a number of them will declare their intention, not because they want to become citizens, but because as voters they want to be brought together in classes, or bunches of twenty-five or fifty, and have their votes sold to candidates for office, and there may be hundreds of them who declare their intention without ever becoming citizens or ever expecting to become citizens of these United States, and I do not believe that the electorate ought to be thrown down before these people to be used as a mere matter of merchandise. It was in consideration of these views that the Committee changed the language in the old Constitution and excluded these people. The argument here, however, has been made that a number of these people were already qualified voters at the time the declaration was made by the Democratic Convention that no white man would be disfranchised, and while, when I came here I was so green in politics as to believe that the State Convention had exceeded its powers, and had no power to bind me as a member of the Constitutional Convention, and while I came here I had no idea of obeying the dictates of that platform; yet, when I got here and found myself in association with a large number of gentlemen who looked at it from an entirely different standpoint, who thought they were bound by that platform, and had pledged themselves to the observance of it, I



thought, therefore, whatever might have been my individual views, the fact that this Convention, as a Convention, was bound and tied by the platform, I would become ridiculous to set myself up to kick against the great majority of its members, and I concluded to lay aside my personal views and to act in all other matters in this Convention as if I believed that the platform was binding on me in every word and letter, and I shall, therefore, vote consistently throughout for the observance of the terms of the platform, because I believe that the majority of the Convention are bound to do so. Now, in considering this question, it had not occurred to us that there was anything in the platform that made it necessary that we should admit any portion of this vote which we thought ought not, upon principle, to be admitted to the electorate, but the discussion that has taken place here inclines me to think that I was mistaken in that, and I am inclined to think that under the platform, we are obliged to allow those white people of foreign birth, who were qualified voters at the time their declaration was made, to remain qualified voters under this Constitution, and, therefore, I think it is the sense of the committee to accept the modification that has been made by the resolution that has been offered, but I desire to offer an amendment providing that if these same people who have declared their intention to become citizens of the United States shall fail to become citizens after they have had an opportunity to do so, that then they shall cease to participate in the electorate of this State, and I offer that resolution.

MR. SANFORD (Montgomery) — When it says any white man, didn't it have reference to citizens of the United States born or naturalized? It could not have reference to men who were not citizens of this country.

MR. SMITH—As I said, I am not a good interpreter of that platform, because I was a kicker against it, and I have taken the interpretation of the gentlemen who feel themselves bound by it, and they think that every man who could vote at that time was within the meaning of the platform, whether he had become a citizen of the United States or not, and I am abiding by the interpretation that I have received.

The Secretary read the amendment of Mr. Smith as follows:

"Provided, that all such foreigners who had declared their intention to become citizens of the United States, shall cease to have a right to vote if they shall fail to become citizens of the United States after they are entitled to become such citizens."

MR. SAMFORD (Pike)—I would like to have both of the amendments read together.

The Secretary read the amendments as follows: "Amend by adding after the words 'United States' in the first line of Section 1,

the following words, 'and every male person of foreign birth who before the adoption of this Constitution, may have legally declared his intention to become a citizen of the United States; provided, that all such foreigners who have declared their intention to become citizens of the United States, shall cease to have a right to vote if they fail to become citizens of the United States after they are entitled to become such citizens.'

MR. SAMFORD (Pike)—I am not a member of the Committee on Suffrage, but no man in this Convention has the question closer to his heart than I have. There is no member on this floor who would go as far or further to protect the interests of every white man and every black man in this State than I would. There is no man in this Convention who would go further to guarantee to the people of Alabama white supremacy than I would, and there is no man within the sound of my voice who would be further from disfranchising any white voter of the State of Alabama than he who speaks to you now; but, Mr. President, the man who is not a citizen of the State of Alabama does not come within the pledges made by the Democratic party in their conventions that have preceded this Convention. I will admit that upon first blush, it occurred to me that the amendment offered by the gentleman from Jefferson was the proper thing to do. That, perhaps, it would be wise, to incorporate it in our organic law, but we have no more right to extend the right of franchise to men who are not citizens of the State of Alabama—

MR. SANFORD (Montgomery)—And of the United States.

MR. SAMFORD (Pike)—And who lived within its borders, than to those who own property here and live on the outside of its borders.

MR. LOWE (Jefferson)—Will the gentleman permit an interruption?

MR. SAMFORD (Pike)—No, sir—yes, I will: I beg pardon: I will permit the interruption.

MR. LOWE—I want to ask the gentleman if there is such a thing in the platform changing any provision of the Constitution regulating the right of a white man. I ask the gentleman in that connection, if the proposition of the committee does not alter the existing Constitution as to the right of a white man to vote?

MR. SAMFORD (Pike)—No man in this Convention would be further from violating a pledge of the Democratic party with reference to the suffrage than I would be, but when I say that, I mean the intent and spirit of the platform, and not its letter—not necessarily its letter. There can be no good reason why men who are of foreign birth, who have come to our friendly shores, and who have engaged in our manufactories, engaged in working out

mines for the dollars and cents that come to them, should be permitted to participate in our republican forms of government before they have learned the alphabet of a republican form of government. There is no sense in placing the elective franchise in the hands of a man who has not become familiar, either by education or by study or by having it instilled into him from his youth up—I say there is no reason why a man who has not become educated to a republican form of government should have the right of exercising this two-edged sword. He owes no obligation nor allegiance to this people, he owns no property in this State, he has no sympathy, perhaps, with the great destiny of this people, and yet, forsooth, we give him the right of casting a ballot which has been said to a two-edged sword, and cuts on both sides. I, for one, am not willing to incorporate in our organic law a clause that will give to people of an entirely different view of government the right to exercise the franchise and assist in maintaining this government until they have at least had a few years in which to consider our forms of government. It may be true that at the present time there are comparatively few of these citizens within our borders. It may be true that for the present they are confined to a few hundred in the magnificent county of Jefferson and to a few more hundreds in the splendid county of Mobile, but as has been said by the gentleman from Mobile, the tide of immigration is turning our way. The immigrants from the old countries are flowing into the beautiful southland, the immigrants—whenever they can—from China, are coming to the beautiful Southland, the people of the civilized world are beginning to see the beauties of our climate, and the glories of our soil, and the tide of immigration has turned in our direction. Put within our borders a few thousand of the men who for some time have assisted in shaping the destinies of Chicago and the great cities of the Northwest, and I say to you here, I would rather ten thousand times have the illiterate negro vote continue to cast the franchise. Mr. President, I hope that neither of these amendments will be adopted by this Convention, but that the Convention will submit itself to the wise, to the careful and to the powerful conclusions of this splendid committee that they have appointed to frame this instrument.

MR. SANFORD (Montgomery)—I quite concur with the gentleman from Pike in supporting the report of the Committee as it came from that body. It gives to every male citizen of this State, who is a citizen of the United States, the right to vote. The amendments propose to give to citizens of foreign countries the right to vote who may not even have resided two years in the State of Alabama. A citizen owning land here, a citizen of Great Britain owning land here may come to the city of Montgomery, for instance, be pleased with the social surroundings, and declare his intention to become a citizen. He goes back home, he remains several years, he comes back, he never has perfected his citizenship

and yet an election is held and he chooses to vote. He votes for the electors for President, for the Governor, for your legislature, for your Congressman, for your judges of every court, from justice of the peace to the Supreme Court. Now, it does seem to me that men who have no interest in this country should not be permitted to vote at the elections. To those gentlemen who have so much sympathy for the foreigner who has merely declared his intention, let me say that I have quite as much, and that I have canvassed Alabama in behalf of the rights of foreign citizens when many of those gentlemen were not born, or were playing marbles in the school-yards. I have always been the friend of the foreigner, it is a fact well known where I live, but I do not believe that any foreigner, however wise, virtuous or worthy he may be, has a right to participate in this government unless he is in a condition to bear its burdens. A foreigner here who has declared his intention cannot be compelled to bear arms in defense of the State, he cannot be enlisted in your police, he cannot be recruited for any purpose, and, therefore, it seems to me, that he who cannot be compelled to support the government should not have the privilege of making its policies and of voting for its chief officers. I hope that the amendments will not be adopted by this Convention. I can see no reason why a man from Italy or Turkey or any of the Caucasian countries may have the privilege of voting in Alabama when he merely said, "I would like to be a citizen." The government requires certain facts to be proven. He must be proven to be a man of good moral character, he must be proven to be attached to republican institutions, and if that is the experience of the statute of naturalization, he cannot become a citizen of Alabama unless he is a citizen of the United States by birth or by the process required by its naturalization laws. It does not require him to be five years in Alabama—as one of my friends suggested—he must be a resident of the United States five years before he can become a citizen, and yet we give him all the rights of citizenship if he happens to declare his intention and comes to Alabama under the proposed amendments and remains two years in the State. I do not think it is just to other citizens of the country. Men may own thousands of acres of land here, they put their tenants, foreigners, upon these lands, they may teach them to declare their intention, they become voters at once and then they have an influence in your elections far beyond what was contemplated when the tenantry was settled upon the lands of Alabama. I hope, Mr. President, that the section reported by this Committee will be adopted without amendment.

MR. KNOX—I do not desire to discuss the question at any length, but I simply want to say that I fully agree with the gentleman from Pike and the gentleman from Montgomery who have spoken against these amendments. I may be mistaken, but my recollection is, Mr. President, that the States of South Carolina, Mississippi, Louisiana and North Carolina, that have dealt with

this subject have taken this view. They have embodied the same provision with reference to the participation of foreigners in the exercise of the right of suffrage that our Committee on Suffrage has done. It is not a disfranchisement of these people. It simply provides that they cannot merely declare their intention and remain citizens of foreign countries. Many of them, I am informed, declare their intention and never get any further. They never prove up and comply with the requirement of the act of Congress, and many of them, it may be, cannot comply, because the act of Congress, Mr. President, requires that they must be able and ascribe up to the conditions which our Committee on Suffrage have required. They must prove that they are men of good character, that they have behaved and conducted themselves as good citizens before they can comply, and it may be that many of them fail to comply because of their inability to do so. They are not disfranchised by this provision. They may go on if their conduct and character is such as to enable them to do so, and qualify themselves for citizenship. It seems to me that it is only reasonable to expect and to require that they should do so. I am in favor of the provision as it was originally reported by the committee.

MR. deGRAFFENREID—I desire to state that I agree with the gentleman from Pike and it seems to me that it is absolutely unnecessary for this section to be encumbered with either one of these amendments. It also seems to me that in refusing to adopt them we will not violate any statement that was made in the Democratic platform. If the members of this Convention will read carefully this report that comes from this committee, they will find that all men who are now entitled to vote under the laws of Alabama will be entitled to vote in all elections except the general election in 1902, and that this Constitution, so far as its limitation upon suffrage is concerned, will not go fully into effect prior to 1903. If the majority report of the Committee on Suffrage is adopted by this Convention, no election after the election in 1902 will be held for State officers until 1906, so that any man who has already declared his intention to become a citizen of this State will have the opportunity under the general laws of the United States to perfect his intention by becoming a citizen, before this Constitution goes fully into effect. I do not think, Mr. President, as we propose to cut from the electorate many men who have been born and raised to manhood in Alabama, and who are citizens of this State, that we should permit people who are foreigners by virtue of a mere declaration and who, perhaps, not only do not understand anything about our institutions, but are perhaps unable to speak our language, to aid us in electing officers who will in the future frame our laws. I believe that this provision as reported by the committee which comes with the endorsement of every member of the committee, appears in all the modern Constitutions of the

States, and that it should be adopted by this Convention without change or amendment.

MR. KIRKE—I rise to support the amendment of the gentleman from Jefferson as amended by the gentleman from Mobile. I think a strict adherence to the pledges of the Democratic party requires the adoption of that amendment. That amendment, as I understand it, applies alone to those of foreign birth who, under the present Constitution, should have the right of franchise. I would oppose the amendment if it went any further in extending the privilege of franchise to the foreigner. But I do believe it is the duty of this Convention to adhere literally to the pledges of the Democratic party upon that proposition, and I might say in this connection, Mr. President, that notwithstanding the great clamor that has been made against the grandfather clause, I believe it is one of the best provisions that has been reported by the committee. It is true that that grandfather clause applies to the temporary plan, but if we adhere to the pledges of the party, we must incorporate in the permanent plan the grandfather clause. I believe it is our duty to see that no white man in the State of Alabama is disfranchised by the Constitution that we are framing now. The pledges of the party have gone out to every white man, and as I said a moment ago, the great clamor against the grandfather clause does not emanate, Mr. President, from the masses of the voters in this State. They want it, and it is necessary that we incorporate that clause in the Constitution before we submit it to the people for ratification. But that question will be discussed later in the consideration of this report. I trust, gentlemen, that you will support the amendment to this section of the committee's report.

MR. FERGUSON—I rise to support the amendment offered by my colleague from Jefferson, and also the amendment offered by the gentleman from Mobile, as I believe it to be reasonable. We have a clause in the Declaration of Rights declaring that emigration shall be encouraged in the State of Alabama. Can we encourage emigration to this State unless we give the right to people coming here as emigrants to participate in the affairs of government? I believe that was what induced the framers of the Constitution of 1875 to embody that provision in the Constitution of this State. I believe that is what induced the framers of the Constitution of the United States to recognize the naturalization of foreign citizens.

Now, Mr. President, I desire to add my mead of praise to what has been said of the foreign born citizens of Jefferson county. I have been a solicitor in that county for well nigh thirteen years, and have attended its courts and its grand juries and I desire to say that it is rare, indeed, when you find them defendants in the criminal courts of that country. They are frugal and industrious

people, as a body in the main. They are home-builders. Mr. President, a great many of them. Many of them have builded homes in Jefferson County, and many of their little communities have erected churches there for the worship of Almighty God. It is true, as said by the gentleman from Mobile, that many of them do not conceive the good purposes of citizenship. That applies to but one or two nationalities; but the great bulk of the foreign-born citizenship of Jefferson County do appreciate the duties and responsibilities of citizenship, and will know and recognize the principles of republican form of government. They have taken an active interest in politics, and as a general rule they have stood by the dominant party in this State in many close contests. I will support, Mr. President, the amendment offered by my colleague from Jefferson, and also the amendment to the amendment offered by the gentleman from Mobile.

MR. SANFORD (Montgomery)—There is nothing that prevents them from voting or holding office after they have been naturalized. It is before they are naturalized that we are objecting to their voting.

MR. FERGUSON—I think the amendment offered by the gentleman from Mobile is entirely reasonable and covers that point.

MR. DENT (Barbour)—I just desire to add a word or two upon that amendment but before I do that, I desire to say I have heard a great deal said in reference to party pledges, and the pledges contained in the platform. I do not propose to violate what I consider the spirit of the pledges of the Democratic party, but, while I am upon my feet, I propose to present my views of those pledges for what they are worth to this Convention. We are pledged here not to disfranchise any white man. I take it that that means that we are not to do it if we can avoid it and prepare and make a Constitution that will be beneficial and acceptable to the people of Alabama. But, Mr. Chairman, there is another view of this question which has occurred to me and which I have heard discussed, and I want to illustrate. Now, if the convention was going to adopt a Constitution without submitting it back to the people, we should certainly be very careful to preserve the pledges that we made them; but that, I presume, in fact, I am satisfied, is not to be the case. Whatever Constitution we make will be submitted back to the people of the State of Alabama for their ratification or their rejection. Now, let me illustrate my view of the principle that is involved. We represent the people of Alabama as their agents. Now, a principal sends out his agent to make a contract for him, and he limits him in making the contract, stating that he is to make the contract in a particular way and in a particular manner and have in it particular conditions. The agent goes and finds that it is impracticable to make such a contract, as his principal has prescribed, but he in the exercise of

his discretion, makes a contract upon the condition that it shall be ratified by his principal. He makes that contract and submits it back to his principal and says: "Here, I could not make the contract literally as you gave me instructions to make it, but I made a contract as near to it as I could and which I think will be beneficial to you, and you have the right now to say whether you will stand by that contract or reject it." If he does that, I want to know who is hurt?

If we make a Constitution here, doing the very best we can, for what would be to the very best interests of the people of Alabama, suppose we do violate in letter some of the pledges made by the Democratic party in its platform; if we refer it back to the people, and they accept it, who is hurt by it?

But now I come back to the amendment. I do not believe that the man who is not a citizen of Alabama should have the right to select the men to make its laws and to enforce them. Do you know, Mr. President, that there are but five States in the forty-five that compose the Union of States in this country that have this principle engrafted in the organic law, Alabama being one of them? Take out Alabama, and we have about four or five left—States in the Northwest where this element dominates and controls. You go to the great States like New York and Ohio and Illinois and Pennsylvania, and States like them, and they have no such provision. In fact, as I have said, only a few States like them, and they have no such provision. In fact, as I have said, only a few States in the Northwest, Minnesota, Michigan and Wisconsin, and perhaps some others that I do not recall, have this provision of allowing aliens to vote.

I say take history. Isn't it worth something to the people of Alabama? Isn't it worth something as a guide to those who are making a Constitution for Alabama that out of forty-five States in the Union less than five have this principle engrafted in their Constitutions? I hope the amendment will be voted down.

The President here took the chair.

MR. DAVIS (Etowah)—Mr. President, I favor the amendment of the gentleman from Jefferson as amended by the amendment of the gentleman from Mobile. I believe that this is the time of all times when we should not stand on hair-splitting technicalities and say that we are going to adopt the spirit of the platform, but that we are at liberty to depart from the letter of the pledge. I believe that this report of the Suffrage Committee is a magnificent production. It far exceeded my expectations, although I expected a report from them that would be a credit to this State, and yet, as high as I have regarded it, I saw this morning, to my mind, an imperfection, and that will be cured if this amendment is adopted. Now, Mr. President, it occurs to me that if we should



vote down these amendments, and thereby strike from the electorate of Alabama some of the white people of the State who have heretofore enjoyed the privilege of voting, that when we go back in the Fall to advocate the adoption of this Constitution, the people of Alabama, who are not so intelligent as those in this Convention may say, "You have stricken out a part of the white people of Alabama who were entitled to vote." They cannot understand this suffrage report as a whole, for we were so hedged in by the Fifteenth Amendment on the one side, and the pledges of the Party on the other, that it is necessarily complex, and I believe, Mr. President, that a large number—the large mass—of the voters of this State will have to take that suffrage plank on faith from the members of this Convention, and others from the State, who will go out and advocate the adoption of the Constitution and of this particular plank,—I say I believe they will not be able to understand it thoroughly, and will have to vote on faith largely.

Now, then, if it is brought up on this plain, pure principle, this simple proposition, it will be urged by the opposition that you have disfranchised a part of the white people of Alabama, in that you have taken from those who heretofore had the right to vote that right, and we cannot gainsay it, but will have to stand silent and admit that we have disfranchised a certain part of them.

How, then, can we expect them to believe this suffrage report and believe that we have not disfranchised them further? There is no man in this Convention who is more opposed to the foreign-born element coming in and usurping the functions of government and participating in shaping our laws than I am, and I heartily favor the provision in this report which says that after a certain day all foreigners coming in must hew to the line and become citizens of the United States before they can avail themselves of the privilege of voting, but those who are at present entitled to vote are a mere handful and the amendment of the gentleman from Mobile and which I thoroughly indorse goes to the extent of saying that even they shall not continue to enjoy the privilege of voting if they do not carry out their intention of becoming citizens, indeed. I trust, Mr. President, that, in the incipency of the discussion of this suffrage report, we will not violate either the spirit or the letter of the pledge, and I hope the amendment of the gentleman from Jefferson as amended by the gentleman from Mobile will be adopted.

MR. BULGER—If I understand the Section as reported by the Committee and the purpose of the amendment offered by the gentleman from Jefferson, it seems to me that it would be unwise to change anything in this Section as reported by the Committee. The framers of the fundamental law of the whole country foresaw the question with which we are confronted this evening. They put in the first article of the Constitution of the United States a pro-

vision leaving to Congress the power to settle this question, and the Congress of the United States, in their wisdom, saw that five years was little enough for a foreigner to come to this country and become a citizen. On the other hand, Mr. President, here is a young man of America, born on American soil, who is educated in the English language, trained in American colleges in the arts and sciences of our government, and who at 20 years of age is not permitted to vote, and yet right by his side, a foreigner who has only been in this country but a few days, has only to declare—not to become a citizen, but to declare—his intention to become a citizen, and he is entitled to vote. I say, Mr. President, it breaks down the theory of the Government when you permit such a thing. The great moving principle that called this Convention together was to purify the ballot. You may pass an article on the suffrage that will strike down every colored voter in the land, and if you leave the foreign element, about which I have heard, still to vote, the ballot will be far from pure. The honest, capable negro, who has been born and raised in America, in my humble judgment, is better qualified to vote even when the foreigner has been here for a term of five years. It seems to me that the Committee which has so faithfully and so ably presented to this Convention the Article on the great and all-important question of the suffrage has acted wisely when they put this simple change from the old Constitution which, with the negro stricken out, the strange foreigner will be stricken out and our ballot will be pure. I desire to register not only my vote, but to register my voice against both of the amendments and in favor of the Section.

MR. COLEMAN (Greene) — Mr. President, no thoughtful man can underestimate the important of the questions which are presented to you for consideration. The future prosperity of this State depends upon how these questions are solved. As has been told you, the Committee struggled with this provision for nearly two days, discussing it in all its various aspects. We were aware of the views that had been presented by the distinguished gentleman from Jefferson, and there were counteracting views from other portions of the State. There were delegates who took the same view of some of the delegates here that there was a technical violation, perhaps in their own minds it may have been, but that question was not discussed before the Committee. The great question presented to the Committee was what was the best suffrage plan we could devise for the good of the whole State, and you have the result before you. It is the purpose of the Committee to present its view, to let this Convention know what it thought best, but upon these points to place the responsibility of the choice with the delegates here assembled. The Committee will make no objection to any action taken by this Convention. We are after the very best plan that can be ascertained and adopted. I think the question has been sufficiently discussed, and while I would not cut off

any gentleman from expressing his views, I believe it is time to move the previous question upon the adoption of the substitute of the gentleman from Mobile and the amendment by the gentleman from Jefferson and the original Section presented in the report of the Committee.

THE PRESIDENT—The question is, shall the main question be now put?

Upon a vote being taken the main question was ordered.

MR. BEDDOW—Under the rules regulating the debate on the suffrage question, I believe I have the right to close.

THE PRESIDENT—The right to close would be with the Chairman of the Committee.

MR. BEDDOW—Upon reading this resolution, I believe I would have the right to close.

THE PRESIDENT—Will the gentleman please read the resolution?

Mr. Beddow thereupon read the resolution as follows:

Resolution No. 255, by Rules Committee:

Resolved, that the rules of the Convention limiting debate be suspended when the report of the Suffrage Committee is taken up for consideration, and that each delegate be allowed to speak once, and not longer than thirty minutes upon any proposition presented by the report of the Committee any amendment thereto, except that the Chairman of the Committee or mover of the amendment, or such delegate as such Chairman or mover may yield his time to, may, after the previous question has been ordered, close the debate, and in so doing may speak for a like period of thirty minutes; provided, that the time here limited may be extended by a majority of the delegates voting without a suspension of the rules.

THE PRESIDENT—The Chair will state that the same question has been presented several times before, and the construction which the gentleman from Jefferson put upon it would be true if the motion for the previous question was limited to the amendment. If the motion for the previous question in this case was limited to the adoption of the amendment, the gentleman proposing the amendment would have the right to conclude, but where the previous question, as in this case, is directed to the section, only one person can conclude under the rule, and the ruling of the Chair before has been (and the Chair still thinks it is correct) to give that right to conclude to the Chairman of the Committee, because upon this issue not only the amendment, but the original section is involved.

MR. CARMICHAEL (Colbert)—I move that the rules be suspended and that the gentleman from Jefferson be allowed to close the debate.

THE PRESIDENT—It is moved that the rules be suspended and the gentleman from Jefferson be allowed to close the debate. Possibly the Chairman of the Committee would yield the floor to him.

MR. COLEMAN—I yield the floor to him, but still I retain the right to close if I see proper.

THE PRESIDENT—The Chairman of the Committee yields ten minutes of his time to the gentleman from Jefferson.

MR. BEDDOW—I desire to thank the Chairman of the Committee. There have been some good arguments on the question of who should not be allowed to vote in our elections, but the serious question in the matter we are taking under consideration here is not who would be a good voter, but who would be a poor voter, in the contemplation of the new Constitution we are about to frame. The question that confronts us at the very outset, in the very first section of the article, and the first line of that section, is shall we, as the representatives of our constituents in this Constitutional Convention stand up and abide by the pledges that we made our people before we were elected to this Constitutional Convention. When the dominant party of this State met in convention, they adopted a platform in which these words were used: "That no white voter shall be disfranchised except for infamous crime." "No white voter." There is no other construction that can be put upon that than that no man who, at the time he voted for us as delegates for this Convention, and who had the right at that time to vote, should be disfranchised. When we met in Birmingham to consult together, we, by the unanimous vote of every delegate present, in the rooms of the Commercial Club, indorsed, ratified and pledge ourselves to stand up to those pledges, and now we are confronted as I say in the very first paragraph—the very first line—and asked to go back on our pledges, and disfranchise possibly 5,000 or 6,000 citizens and voters of the State of Alabama. Some gentleman has seen fit to say that these foreigners are unworthy of a vote. There are men in my county who are the peer in intellect, who are of foreign birth, and who are not naturalized, of any gentleman upon this floor. There are men in my county who, if this clause was adopted, would be disfranchised, who favored the calling of this Convention and who thought when we made these promises that we made them in good faith. Some gentlemen seek to dodge the question by saying that it will be submitted back to the people for ratification, and the gentleman who spoke from the County of Barbour indicated as much. But if we violate our pledge in that respect, have we not the same

right to go further and say that we will not submit it in one instance, you may do it in another.

Mr. President, from the time of the landing of the Pilgrim fathers upon this continent, America has always been the refuge and the haven for the oppressed of other nations in quest of liberty and law. Shall we refrain from holding out to them those same blessings? Shall we take a back step? Shall we go back on our pledges? Go back on the friends who voted to send us here and stand up here as the poet says.

That friendship to us is ambition's ladder,  
Whereto the climber upward turns his face,  
But when he once attains the upmost round  
He then to the ladder turns his back  
Looks into the crowd and scorns  
The base course by which he did ascend.

These pledges I made to my people are just as binding to me today in the halls of this Convention as the day I made them, and if we never have suffrage reform until I am required to go back on the pledges I made my people, I say by my vote we will never have it. I believe that is all I care to say on this question. It has been discussed at length. It has been ably discussed from every standpoint, but I say to you, if you forget your pledges, this Constitution will not be ratified and we ought not to hope for its ratification.

MR. COLEMAN (Greene)—The provisions in the Democratic platform is as follows: "that we pledge our faith to the people of Alabama not to deprive any white man of the right to vote except for conviction of infamous crime," etc.

The question for you to consider is this: Whether it deprives any white man from qualifying himself to vote by becoming a citizen of the United States. If he fails to become a citizen of the United States, he cannot vote, but if he becomes a citizen of the United States, then he has the right to vote, if he possesses the other qualifications. As I stated before, you have heard distinguished men—distinguished lawyers—discuss that question. What is best for the people of Alabama under all the circumstances? There is a pledge, and you have heard the opinion of the attorneys learned in the law upon the question. I call for the previous question.

The ayes and noes were called for and the call sustained.

THE PRESIDENT PRO TEM.—The question is upon the amendment offered by the gentleman from Mobile to the amendment offered by the gentleman from Jefferson to the section as reported by the committee.

The amendment was again read, and upon the call of the roll the vote resulted as follows:

## AYES.

Almon,	Heflin, of Randolph,	Palmer,
Ashcraft,	Henderson,	Parker (Cullman),
Barefield,	Hinson,	Parker (Elmore),
Beavers,	Hodges,	Pettus,
Bethune,	Hood,	Pitts,
Blackwell,	Howell,	Proctor,
Brooks,	Howze,	Renfro,
Burnett,	Inge,	Reynolds, of Henry,
Burns,	Jackson,	Rogers (Lowndes),
Carmichael, of Colbert,	Jenkins,	Sanford,
Chapman,	Jones, of Bibb,	Sanders,
Cobb,	Jones, of Montgomery,	Searcy,
Coleman, of Greene,	Jones, of Wilcox,	Selheimer,
Coleman, of Walker,	Kirk,	Sentell,
Cunningham,	Kyle,	Smith (Mobile),
Davis, of DeKalb,	Ledbetter,	Smith, Mac. A.,
Davis, of Etowah,	Leigh,	Smith, Morgan M.,
Duke,	Locklin,	Sorrell,
Eley,	Lomax,	Spragins,
Eyster,	Macdonald,	Stewart,
Espy,	Malone,	Thompson,
Ferguson,	Martin,	Waddell,
Gilmore,	Maxwell,	Walker,
Glover,	Merrill,	Watts,
Graham, of Talladega,	Miller (Wilcox),	Weatherly,
Grayson,	Norman,	Whiteside,
Greer, of Perry,	Oates,	Williams (Barbour),
Handley,	O'Neal (Lauderdale),	Williams (Marengo),
Harrison,	O'Neill, of Jefferson,	Wilson (Clarke),
Heflin, of Chambers,	Opp,	Wilson (Wash'gton),

Total—90.

## NOES.

Messrs. President,	Foshee,	Reynolds (Chilton),
Altman,	Freeman,	Rogers (Sumter),
Banks,	Graham, of Montgomery,	Sanford,
Bartlett,	Knight,	Sloan,
Beddow,	Lowe, of Jefferson,	Spears,
Bulger,	McMillan, of Baldwin,	Tayloe,
Craig,	Moody,	White,
Dent,	Norwood,	Winn,
deGraffenreid,	Phillips,	
Fitts,	Pillans,	

Total—28.

## ABSENT OR NOT VOTING.

Boone,	Haley,	O'Rear,
Browne,	Jones, of Hale,	Pearce,
Byars,	King,	Porter,
Cardon,	Kirkland,	Reese,
Carmichael, of Coffee,	Long, of Butler,	Robinson,
Carnathon,	Long, of Walker,	Sollie,
Case,	Lowe, of Lawrence,	Stoddard,
Cofer,	McMillan (Wilcox),	Vaughan,
Cornwall,	Miller (Marengo),	Weakley,
Fletcher,	Morrisette,	Willet,
Foster,	Mulkey,	Williams (Elmore).
Grant,	Murphree,	
Greer, of Calhoun,	NeSmith,	

By a vote of ninety ayes to twenty-eight noes, the amendment offered by Mr. Smith (Mobile) was adopted.

MR. COLEMAN (Greene)—A parliamentary inquiry. Does the defeat of the amendment offered by the gentleman from Jefferson have the effect to leave the section as originally reported by the committee?

THE PRESIDENT PRO TEM.—In the opinion of the Chair it would. The question is upon the adoption of the amendment offered by the gentleman from Jefferson.

MR. BEDDOW—I call for the ayes and noes upon that.

A DELEGATE—They have been ordered—

THE PRESIDENT PRO TEM.—The Chair is not certain whether they were ordered on this proposition. Is the call sustained?

The call was sustained and the amendment of the gentleman from Jefferson was read.

MR. CUNNINGHAM (Jefferson)—I rise to a parliamentary inquiry. If the amendment of the gentleman from Jefferson is defeated, leaving the present section as it stands, will it not have the effect to disfranchise white foreign voters who are now entitled to vote?

THE PRESIDENT PRO TEM.—In the opinion of the Chair that is not a parliamentary inquiry, but one for the courts of the country.

MR. deGRAFFENREID—I will ask if it would have that effect, if such foreigners should qualify themselves as citizens?

THE PRESIDENT PRO TEM.—The Chair is of the same opinion in regard to that inquiry.

MR. OATES—I rise for the purpose of making a suggestion.

THE PRESIDENT PRO TEM.—The previous question having been ordered, discussion is out of order.

Upon the call of the roll, the vote resulted as follows:

### AYES.

Almon,	Greer, of Perry,	O'Neill (Jefferson),
Ashcraft,	Handley,	O'Neal (Lauderdale),
Barefield,	Heilin, of Chambers,	Opp,
Beddow,	Heflin, of Randolph,	Parker (Cullman),
Bethune,	Hinson,	Pettus,
Blackwell,	Hodges,	Proctor,
Brooks,	Howell,	Reynolds (Henry),
Burnett,	Howze,	Reynolds (Chilton),
Carmichael, of Colbert,	Jackson,	Rogers (Lowndes),
Chapman,	Jenkins,	Sanders,
Cobb,	Jones, of Bibb,	Searcy,
Cofer,	Jones, of Montgomery,	Sentell,
Cunningham,	Kirk,	Smith, Mac. A.,
Davis, of Etowah,	Leigh,	Sorrell,
Duke,	Lomax,	Spragins,
Eley,	Lowe (Jefferson),	Stewart,
Espy,	Macdonald,	Thompson,
Ferguson,	Malone,	Vaughan,
Fitts,	Martin,	Weatherly,
Gilmore,	Maxwell,	White,
Glover,	Merrill,	Whiteside,
Graham, of Montgomery,	Miller (Wilcox),	Williams (Barbour),
Grayson,	Norman,	Williams (Marengo),

Total—69.

### NOES.

Messrs. President,	Harrison,	Parker (Elmore),
Altman,	Henderson,	Palmer,
Banks,	Hood,	Phillips,
Bartlett,	Inge,	Pillans,
Bulger,	Jones, of Wilcox,	Pitts,
Coleman, of Greene,	Knight,	Renfro,
Coleman, of Walker,	Kyle,	Rogers (Sumter),
Craig,	Ledbetter,	Sanford,
Davis, of DeKalb,	Locklin,	Sanford,
Dent,	McMillan (Baldwin),	Selheimer,
deGraffenreid,	McMillan (Wilcox),	Sloan,
Eyster,	Moody,	Smith (Mobile),
Foshee,	Norwood,	Smith, Morgan M.,
Graham, of Talladega,	Oates,	Spears,



Tayloe,	Watts,	Winn,
Waddell,	Wilson (Clarke),	
Walker,	Wilson (Wash'gton),	

Total—49.

# ABSENT OR NOT VOTING.

Beavers,	Grant,	NeSmith,
Boone,	Greer, of Calhoun,	O'Rear,
Browne,	Haley,	Pearce,
Burns,	Jones, of Hale,	Porter,
Byars,	King,	Reese,
Cardon,	Kirkland,	Robinson,
Carmichael, of Coffee,	Long (Butler),	Sollie,
Carnathon,	Long (Walker),	Studdard,
Case,	Lowe (Lawrence),	Weakley,
Cornwall,	Miller (Marengo),	Willet,
Fletcher,	Morrisette,	Williams (Elmore),
Foster,	Mulkey,	
Freeman,	Murphree,	

So the amendment to the amendment was stopped.

THE PRESIDENT PRO TEM—The question recurs upon the adoption of the section as amended.

Upon a viva voce vote the section as amended was adopted.

MR. LOWE (Jefferson)—I desire to move a suspension of the rules for the purpose of extending the privileges of the floor to the distinguished representative of the Fourth District. One who has done as much, I believe, as any other man to render possible the holding of this Convention, the Hon. S. J. Bowie.

Upon a vote being taken the rules were suspended, and upon a further vote the motion was unanimously adopted.

Section 2 was read as follows:

Sec. 2. To entitle a citizen to vote at any election by the people, he shall have resided in the State at least two years, in the county one year, and in the precinct or ward three months immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year 1901, and for each subsequent year; provided, that any elector, who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal.

THE PRESIDENT—The question is upon the adoption of Section 2.

MR. LOWE (Jefferson)—I have an amendment.

The Secretary read the amendment as follows: "Amend Section 2 by adding after the words 'to vote,' in the fifth line, the words 'and each year subsequent to the last general election next preceding.'"

THE CHAIR—The question is upon the amendment of the gentleman from Jefferson.

Mr. Coleman (Greene) sought recognition.

MR. PILLANS—I desire to make a suggestion to the gentleman from Greene which I think he will adopt.

THE PRESIDENT—Does the gentleman yield?

MR. COLEMAN (Greene)—I will hear it.

MR. PILLANS—The first line of the section should be amended in view of the action on Section 1, by striking out the word "citizen" and putting in the words "any person." I think to make it consistent with what we have done, it should entitle any person to vote instead of any citizen.

MR. LOWE (Jefferson)—If the chairman of the committee will give me a moment I can make my provision plain.

THE PRESIDENT—The gentleman from Jefferson asks the privilege of making a statement.

MR. LOWE—It will not take but a moment; I do not care to discuss it. The section, as I understand it, requires the payment of the aggregate poll taxes in February next preceding the election. My amendment requires the poll-tax to be paid in the year in which it is due. I think it is salutary, for the reason that if it is required to be paid in the year which it is due, there will be no temptation to the candidates to supply the money to pay the poll-tax.

MR. COLEMAN—I will say first, in reply to the suggestion made by the delegate from Mobile, that Section 1 has not been altered in any way to conflict with Section 2 as it now reads. It is the purpose of the committee to prepare the section just as it is. When a party offers to vote all the poll tax due by him at the time he offers to vote must have been paid by him. If he does not intend to vote until 1903 or 1905, he is not permitted to vote until he pays all the poll taxes which have accrued against him. The very purpose which the delegate by his amendment offers to secure, is better secured, as we understand the reading of this section, as it is now framed, not only for the year of election, but for all subsequent

years prior to the time he attempts to vote. The latter clause of that section needs some little attention, beginning at the sixth line. "Provided, that any elector who, within three months next preceding the date of election at which he offers to vote, has removed from one precinct or ward in some county, incorporated town or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in said precinct or ward, but for such removal." That is the provision to prevent parties from going out of one ward or precinct into another a few days before the election or within a short time, and perhaps the managers of that beat or ward cannot ascertain whether he is an elector or not. But if he is required to go back into the ward where he removed from, he would be recognized, whether he is a qualified elector or not. The purpose was to prevent parties from voting who were not qualified electors, by simply stepping across the line of an agricultural precinct or from one ward to another in cities. The suggestion that it be made to apply to cities came from members of the committee who reside in large cities, and the precincts from those who are from the agricultural districts. We think it would remedy a great evil as to persons voting who are not qualified electors.

MR. LOWE—Will the chairman yield for a moment? I understand from some members of the committee, it is the purpose to require the payment of poll taxes in each year in which it was due by the first day of February.

MR. COLEMAN—Yes, sir.

MR. LOWE—That is the purpose of my amendment. I thought the language did not reach that. The language of this section as I read permits the payment of the aggregate of poll tax before the first day of February preceding a general election.

MR. COLEMAN—Is not that exactly what it says?

MR. LOWE—That would permit the payment of the aggregate poll tax. Now, for instance, we are having four-year term elections; general elections every four years. The report of the committee would permit the payment of the taxes for four years on or before the first day of February preceding the election.

MR. COLEMAN—I do not think it bears that construction.

MR. LOWE—I think it does. I have studied it carefully. Now, the purpose of my amendment is merely to require the poll tax to be paid each year so there will not be any temptation from any source to supply the money to pay poll tax.

MR. COLEMAN—If it does not mean that, I do not know what it does mean, and for each subsequent year refer back to the first day of February.

MR. LOWE—Will the gentleman pardon me, if I am not intruding. It entitles a resident to vote at any election. "He shall have resided in the State," etc., and he shall have been duly registered and shall have paid on or before the first day of February next preceding the date of the election at which he elects to vote all poll taxes due for 1901 and for each subsequent year; but he must pay all poll taxes, but it does not say that the poll tax shall be paid in the year in which it is due. Now my amendment merely says that it must be paid in the year in which it is due.

MR. COLEMAN—Mr. President and delegates of the Convention. The purpose of the Committee was exactly my understanding now, to avoid what the gentleman desires. This election will come on in 1902. No election can come until 1902. It is to require him to go back and count from 1901 so as to pay poll tax for 1901, and if it comes off in 1902, also in the year 1902.

MR. LOWE—Now, if the gentleman will indulge me, how would it be then as to poll taxes for 1903, 1904 and 1905, and we come to 1906. Under the report of the Committee could not the poll taxes for these four years be paid before the 1st day of February, 1906?

MR. COLEMAN—Mr. President and delegates of the Convention, we are providing here a temporary vote providing for all elections up to a certain date. It can be paid at one time under the report of the Committee. It must be paid on the 1st day of February 1901, and for each subsequent year.

MR. LOWE—Paid for the subsequent years preceding the general election. Can it not be paid for four years at one time?

MR. COLEMAN—We do not so understand.

MR. LOWE—That is the only point I wanted to arrive at.

MR. COLEMAN—I think it is perfectly clear.

MR. LOWE—That is the only purpose of my amendment, to require it to be paid in the year in which it is due.

MR. COLEMAN—I do not know whether I have made myself understood. If the man pays up all his poll taxes he ought to be allowed to vote. I would not permanently disfranchise anybody because at one time he omitted to pay his poll taxes.

MR. LOWE—Will the gentleman pardon me?

MR. COLEMAN—I think I know the gentleman's view.

MR. LOWE—I think the gentleman does not understand my views. If the language correctly reported his ideas.

MR. PRESIDENT—Does the gentleman yield to the gentleman from Jefferson?

MR. COLEMAN—Once more.

MR. LOWE—It is simply to arrive at an understanding. The purpose to disfranchise a man who does not pay within the year, but it is that at the general election he shall not vote unless his poll taxes are paid for the year preceding that general election and subsequent to the last general election.

MR. COLEMAN—Mr. President, the purpose of the Committee was that if a person paid up all the poll taxes when due, he should be allowed to vote. If he was in default in the payment of his poll taxes he should not vote. We did not desire to disfranchise anybody who would comply with the law, who would pay his poll tax, but if he pays all the poll taxes during any year up, even if he misses four or five years, if he comes in and pays all his poll taxes, we have no disposition to disfranchise him. I think I have made myself sufficiently understood. By reading it you will see that if a man fails to pay at any time or fails within a year to pay his poll tax and in any subsequent year pays all the poll taxes accrued against him, he shall be allowed to exercise the franchise. It is not our purpose to disfranchise any one permanently because he fails to pay poll tax. I move, therefore, that the amendment be laid upon the table.

MR. LOWE — May I ask the indulgence of the gentlemen of the Convention for a moment? It is merely on account of the remark of the gentleman just before he took his seat.

THE PRESIDENT—Does the gentleman from Greene withdraw—

MR. COLEMAN—For the present.

MR. LOWE—Does the gentleman understand it is the purpose of my amendment to disfranchise a man who fails to pay his poll tax—permanently disfranchise him?

MR. COLEMAN—It seems to have that effect to me.

MR. LOWE—That is not the intention of the amendment as I understand. The provision as covered by my amendment—we come to a general election. No man can vote in that general election who has not paid his poll tax within the time required each year since the last general election. He loses his vote only in that general election, but in the general election succeeding that, if he has paid his poll tax within the time prescribed each year, in which it is due he would be entitled to vote, and there is no permanent disfranchisement.

MR. COLEMAN—I can only say that the purpose of the Committee was not to disfranchise a man who paid up all poll tax due from him; that he should not lose his right to vote if paid by the first day of the next preceding February. There is no provision there by which if he becomes disfranchised he can be enfranchised again. By reading this provision you will see that it is clear. He is required on the first day of February to pay his poll tax, and he is required to pay at each subsequent year at that time, but if he gets in arrears one, two, three or four years and pays up his poll tax he has the right to exercise the franchise. I move to lay the amendment on the table.

Upon a vote being taken a division was called for. And by a vote of 77 ayes and 27 noes the motion to table prevailed.

MR. ASHCRAFT—I have an amendment.

Secretary read the amendment as follows: "To amend Section 2, by striking out of the first line the words 'a citizen' and insert 'an elector.'"

MR. ASHCRAFT—The purpose of the amendment is simply this: We have so amended the first section as that other persons than citizens may vote and we certainly would not want any confusion about what is meant by Section 2. Those persons who are not citizens and who are entitled to vote certainly ought to be subjected to the same requirements as citizens.

MR. GRAHAM (Talladega)—Mr. President I would like to ask the gentleman from Lauderdale if an elector is not already a voter?

MR. ASHCRAFT—Sir?

MR. GRAHAM—I would like to ask if an elector is not already a voter. I understand your amendment to read "an elector," entitling an elector to vote.

MR. ASHCRAFT—That is true, if he has all the qualifications that make an elector in the first section, but he cannot exercise the right of an elector, unless he fulfills the conditions in the second section. The first tells what shall be an elector, and citizens and persons who have declared their intention to be citizens or electors. He may be registered and still, if he fails to pay his poll tax he is not entitled to vote, although he has all the qualifications of an elector, and Section 2 refers to just such omissions as that of using the term elector instead of citizen.

MR. GRAHAM—Would not he have to be a citizen?

MR. ASHCRAFT—No, sir; he may be a citizen, or a person who has declared his intention to become a citizen.

MR. COLEMAN—Section 1 reads as follows, as amended:

"Every male citizen of this State, who is a citizen of the United States or who has declared his intention to become a citizen of the United States." It requires that a citizen of the State only can vote. To entitle a citizen to vote is exactly in harmony with what is already provided in Section 1, I therefore move to lay the amendment on the table.

MR. PILLANS—I would ask if the gentleman will not withdraw that a moment. I think I can satisfy him that he is in error.

THE PRESIDENT—Will the gentleman withdraw at the request of the gentleman from Mobile?

MR. PILLANS—I will withdraw the request. I can offer it independently as a section.

MR. ASHCRAFT—I yielded to the gentleman for the purpose of asking a question. I did not yield for the purpose of making a motion to table.

THE PRESIDENT—It seems to the Chair that the point is well taken. He is entitled to the floor.

MR. COLEMAN—I recognize it.

THE PRESIDENT—The question is on the motion to table the amendment of the gentleman from Lauderdale.

MR. HOWELL—I have an amendment to Section 2.

"Amend by striking out the word 'two' in the second line and inserting in lieu thereof the word 'one,' also strike out the words 'one year,' in the same line and insert the words 'six months.'

MR. HOWELL—Mr. President, if I remember correctly I have been a voter in Alabama for nearly fifty years, and that has been the law all these years, requiring a residence in the State for one year, and six months in the county. I think that is the provision in our present Constitution, and I see no good reason why we should change it. Therefore, I move the adoption of the amendment.

THE PRESIDENT—The question is upon the amendment offered by the gentleman from Cleburne.

MR. deGRAFFENREID—I move to lay it on the table.

MR. PROCTOR—I move that the amendment be laid on the table.

The motion to table was carried.

MR. PILLANS—I offer this amendment: "Amendment to Section 2 was read as follows: "Amend Section 2 by striking out

of the first line thereof the words 'a citizen' and insert in lieu thereof 'a person.'"

THE PRESIDENT—The question is upon the amendment offered by the gentleman from Mobile.

MR. PILLANS—I regret that my voice is not in very good shape for presenting my views to the Convention, but I am so persuaded that an error will be committed by the adoption of this section, if the first line is unchanged, that I offer this amendment. I know the Chairman of the Committee has stated in his statement here to the Convention that persons who are authorized to vote by the first section are declared to be citizens of Alabama.

MR. deGRAFFENREID—I want to call your attention—it has been adopted already by the Convention, under the Bill of Rights in Section 3.

MR. PILLANS—I think if the Chairman of the Bill of Rights Committee is here, he will bear me out that we struck out that entire section. We had in the old Constitution, the existing Constitution of the State of Alabama an absurd provision and an unconstitutional provision that every person who has declared his intention to become a citizen was a citizen of the United States and a citizen of Alabama; that was absurd, because unconstitutional under the Federal Constitution, which distinctly declares that Congress alone should pass uniform laws of bankruptcy and naturalization, wherefore the Alabama Constitutional Convention of 1875 erred grievously in attempting to make an unnaturalized person a citizen of the State of Alabama. Well, we have not done that today. We have been wiser than they. We have struck out that absurd proposition from the projected Constitution, and we have no pretense in this Constitution that a person who is not a native born in the United States, or one who is naturalized by the processes provided by the act of Congress can become a citizen. We have struck down any other idea. Now comes the suffrage report, harmonized as originally written, and I have no complaint of it as originally written, but we have amended it this very afternoon by declaring that persons who may vote shall be male citizens of the State who are citizens of the United States, or foreigners not citizens of the United States who have declared their intention to become citizens, so far as those foreigners have so declared prior to the ratification of the Constitution. Now, I undertake to say, and I say it without the fear of successful contradiction from the chairman of the committee or any other member of the committee or any other member on the floor, that does not make of those persons so privileged, who have declared their intention prior to the adoption of this Constitution, citizens of this State. They do not become citizens of Alabama and they cannot be made citizens of Alabama until you strike down the Federal Constitution. I heard an argument this morning that led me to suppose



that some of the members of the Convention seem to think that we can traffic with the Constitution of the United States as we will, and even repeal the Fifteenth Amendment, but I do not think this Convention is of that opinion. Now as we cannot strike down the Constitution of the United States, and cannot make citizens out of aliens except by the power furnished by Congress, their declaration of intention and five years residence, and adjuration of their former allegiance to the foreign country from which they came, then it goes without saying that persons whom we have undertaken to privilege as electors in this State, aliens, by the action taken on the amendment adopted this afternoon, are not citizens of the United States, and therefore if this provision stands as it does, you will put burdens on your native born and naturalized citizens, who have simply gone through the form of declaring his intention to become a citizen.

MR. BLACKWELL.—If the gentleman will allow a question, suppose a citizen, a person, should come here and upon landing should declare his intention to become a citizen the day he landed, and thereafter he should come to the State of Alabama with that declaration, could not he vote immediately without staying here two years?

MR. PILLANS—I think so, if you declare that all persons declaring their intention to become citizens prior to the ratification are electors. Elector is the word used, and elector means entitled to vote, but, in the first section you put an additional burden on the citizens and I do not think that is right.

MR. BLACKWELL—I will ask the gentleman the additional question, if that would not be giving to the foreigner who has just landed and knows nothing of our government privileges we are denying to the citizens of Alabama.

MR. PILLANS—Of course.

MR. COLEMAN (Greene)—This was written as a whole altogether, and I believe after hearing the gentleman from Mobile, the committee is prepared to accept the proposition offered by him.

Upon a vote being taken, the amendment was adopted, and upon a further vote the section as amended was adopted.

Section 3 was read as follows:

Sec. 3. All elections by the people shall be by ballot, and all elections by persons in a representative capacity shall be viva voce.

MR. COLEMAN (Greene)—I move the adoption of the section.

Upon a vote being taken the section was adopted.

Section 4 was read as follows:

Sec. 4. The following male citizens of this State, who are citizens of the United States, 21 years old or upwards, who, if their place of residence shall remain unchanged, will have, at the date of the next general election, the qualifications as to residence prescribed in Section 2 of this article, and who are not disqualified under Section 6 of this article, shall, upon application, be entitled to register as electors prior to the first day of January, 1903, namely:

First—All who have honorably served in the land or naval forces of the United States in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the Civil War between the States, or in the war with Spain, or who honorably served in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the States; or

Second—The lawful descendants of persons who honorably served in the land or naval forces of the United States in the war of the American Revolution, or in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the Civil War between the States, or in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the States; or

Third—All persons of good character and who understand the duties and obligations of citizenship under a republican form of government.

MR. SANFORD (Montgomery)—I have an amendment.

THE PRESIDENT—The Secretary will read the minority report.

MR. OATES—I have an amendment to offer to a part of the section that precedes the minority report. I desire to offer an amendment to insert a word in line three.

MR. HOWZE—I think it should be taken up by subdivisions.

THE PRESIDENT—Probably it would be more convenient to discuss it first as a complete section.

MR. OATES—Is it not in order to offer an amendment to the first part of the section before reading the subdivision.

THE PRESIDENT—The Chair will consult the wishes of the minority committee. The regular order under our rules would be when this section is read, to consider the minority report as an amendment, but if the gentlemen making the report wish to offer another amendment they may do so.

MR. OATES—It is not touching that, Mr. President. I want to offer a short amendment which I think aids in perfecting the first part of the third line of this section.

MR. SANFORD (Montgomery)—The amendment which I propose does not reach the second section to which the minority report is addressed.

THE PRESIDENT—To what section does it refer.

MR. SANFORD—It reaches the first subdivision of Section 4.

MR. COLEMAN—I desire to amend Section 4, in the first line, in accordance with the amendment which has already been made to Section 1, so as to make them correspond.

THE PRESIDENT—The chair will first entertain amendments offered by the chairman of the committee. The amendment was read as follows:

“Amend by adding after the words ‘United States’ in the first line of Section 4, the following words: ‘And every male person of foreign birth who, before the ratification of this Constitution, may have legally declared his intention to become a citizen of the United States; provided, that all such foreigners who have declared their intention to become citizens of the United States shall cease to have the right to vote if they shall fail to become citizens of the United States after they are entitled to become such citizens.’”

MR. COLEMAN—I ask unanimous leave to make that amendment.

There being no objection, the amendment was allowed.

Another reading of the amendment was called for.

MR. COLEMAN (Greene)—The word “person” should read “resident.” You could not mean a man residing in Nebraska, but it should refer to a resident of this State.

By consent, the amendment was amended to read “every male resident of foreign birth,” etc.

MR. BEDDOW—I ask unanimous consent that the word “resident” be inserted in the amendment offered by me to Section 1.

There being no objection, the amendment was ordered.

MR. ASHCRAFT—Section 2 provides “who shall have resided in this State two years.” I do not see why it should be necessary to use the words prior to that, because before he is entitled to vote he must have resided in the State two years.

MR. WEATHERLY—I desire to ask if that amendment applies to Section 1.

MR. COLEMAN (Greene)—We are trying to make them correspond.

MR. WEATHERLY—The chair did not so state it, or at least I did not so understand it.

THE PRESIDENT—The chair stated that the gentleman from Jefferson desired his amendment to be so altered as to make it read "every male resident," instead of "person."

MR. COLEMAN (Greene)—According to the procedure heretofore adopted to take up sections which are sub-divided, sub-division by sub-division, as the minority report is directed simply to the second sub-division and not to the first, if we pursue the course heretofore followed, we must consider the first sub-division of the section, and when we come to the second sub-division to which the minority report applies, then the minority report would come up for consideration. That seems to have been the course heretofore pursued, and it would be acceptable to the committee, and I suppose to the chairman of the minority of the committee.

MR. OATES—I would like to offer an amendment to line three of Section 4, which, I think, needs a few words to make it more definite.

THE PRESIDENT—The chair will state under the rule the Convention is considering this Article by section and not by paragraph.

MR. OATES—It is not a paragraph, but in line three of Section 4 of the section at the beginning of the section.

THE PRESIDENT—The gentleman will send up his amendment.

The amendment was read as follows:

"Amend Section 4, in line three, by inserting after the word 'election,' the following, 'after the ratification of this Constitution.'"

MR. OATES—I offer that because I think it will make it more definite and certain. The next general election is not absolutely certain, it ought to be after the ratification of this Constitution.

MR. MERRILL—I rise for the purpose of making a motion to suspend the rules that we may continue in session.

There were loud expressions of dissent.

MR. CARMICHAEL (Coffee)—I move that this Convention be now adjourned.

The motion was carried and the Convention adjourned.